Supreme Court of the United States,

No. 225—DECEMBER TERM, 1867.

FREDERIC BRONSON, EXECUTOR OF THE LAST WILL AND TESTAMENT OF ARTHUR BRONSON, DECEASED,

Plaintiff in Error.

vs.

PETER RODES.

In Error to the Court of Appeals of the State of New York.

Argument for the Plaintiff in Error.

JOHN J. TOWNSEND,
Of Counsel.

New York:
WM. C. BRYANT & CO., PRINTERS, NASSAU ST., COR. LIBERTY.
1868.

Wm. C. Bryant & Co., Printers, 41 Nassau Street, cor. Liberty, N. Y

In the Supreme Court

OF THE UNITED STATES.

No. 225—December Term, 1867.

Frederic Bronson, Executor of the last Will and Testament of Arthur Bronson, deceased,
Plaintiff in Error,

vs.

Peter Rodes.

In error to the Court of Appeals of the State of New York.

On the 16th day of December, 1851, one Christian Metz borrowed of the plaintiff in error $1,400, and, to secure the repayment, gave his bond and mortgage, by the terms of which he promised to pay the plaintiff in error, as executor as aforesaid, the sum of $1,400 in gold or silver coin, lawful money of the United States, on the 1st day of January, 1857, with interest in coin as aforesaid.

On the 25th of March, 1853, the defendant in error purchased the equity of redemptiom of the mortgaged premises, and assumed the payment of the mortgage.

On the 10th day of January, 1865, he tendered to the plaintiff in error $1,507 in United States legal tender notes, and requested the plaintiff in error to accept the same in

satisfaction of the mortgage, which the plaintiff in error refused to do.

At the time when the tender was made, the market value of said notes, in the city of New York, as compared with gold or silver coin, was as one to two and twenty-five hundredths, that is, one dollar in such gold or silver coin was equal in market value to two dollars and twenty-five cents in such legal tender notes.

This action was commenced February 27, 1865, in equity, to compel the plaintiff in error to cancel the mortgage.

On the 11th May, 1866, the Supreme Court of the State of New York adjudged the mortgage paid, and required the plaintiff in error to satisfy the same of record.

On the 31st day of December, 1866, the Court of Appeals affirmed the judgment of the Supreme Court, and certified that in the record was drawn in question the construction of certain provisions of the Constitution of the United States, viz., article 1st, sec. 8, clause 5, and other clauses in that section, and the statutes regulating the gold and silver coins of the United States, fixing their denominations, values and descriptions, and making them a legal tender, and the 20th section of the 16th chapter of the statutes, passed at the 1st session of the 2d Congress, in 1792, providing, among other things, that the money of account of the United States shall be expressed in dollars, cents, &c., and that the decision was against the title, right and privilege specially claimed under the same by the plaintiff in error to a tender in satisfaction of his demand, at the time stated, of an amount of United States legal tender notes of the kind referred to in the record and proceedings, greater than actually tendered.

And that the decision was against the exemption which the plaintiff in error claimed under the said provisions, clauses and articles, from any obligation to receive such notes at their denominational value, irrespective of their value in relation to gold or silver coin.

The Court further certified, that in the record and pro-

ceedings was drawn in question the construction of the first section of the act entitled "an act to authorize the issue of United States notes, and for the redemption and funding thereof, and for funding the floating debt of the United States," passed February 25th, 1862.

And that the decision was against the exemption specially claimed by the plaintiff in error under the same from any obligation to accept in satisfaction of his demand, the number of said notes actually tendered.

It is evident that any right the plaintiff in error has had at any time since the inception of the transaction in 1851, to insist upon any particular medium of payment, depends simply upon the Constitution and laws of the United States.

All his other rights incident to the transaction, may depend upon the common law, or upon local law; this right depends upon federal legislation, and the definition of it is to be ascertained by the construction of federal statutes.

Argument.

Without attempting to trace minutely the legislation of Congress in respect to money, it is sufficient for the purpose of this argument, to state that in pursuance of the power conferred by the Constitution to coin money and regulate the value thereof, certain regulations have been made—a mint for the purpose of a national coinage has been established. It has been enacted that there shall be struck coins of gold, silver, &c., of various denominations, values and descriptions. The values of these coins have been fixed and always described by a reference to a dollar as the unit.

All the coins have been declared to be a lawful tender in payments.

It has been enacted that the money of account of the United States, shall be expressed in dollars and decimal parts thereof.

The Secretary of the Treasury has been authorized to is-

sue, on the credit of the United States, one hundred and fifty millions of dollars and upwards of United States notes, (the amount of the same being limited) and such notes have been declared to be receivable in payment of all taxes, internal duties, excises, debts and demands of every kind due to the United States, except duties on imports, and of all claims and demands against the United States of every kind whatsoever, except for interest upon bonds and notes which shall be paid in coin.

These notes have also been declared to be lawful money and a legal tender in payment of all debts, public and private, within the United, States except duties on imports and interest as aforesaid.

In the contract in this case, the parties selected gold and silver coin lawful money of the United States, as a medium of payment. This was in 1851—before any issue of Treasury notes of the description referred to had been authorized.

After the issue of these notes a difference in their value relatively to coin became apparent, and existed on the 10th day of January, 1865, when the plaintiff in error, by a tender to him of a number of them equal in nominal amount to the sum of money specified in the contract, but inferior in actual value—was called upon to accept the money thus tendered as equivalent to that specified in the contract.

Because of the inferiority in value of the money tendered, he conceived that the amount tendered was insufficient to satisfy the contract.

The plaintiff in error asserts that at the time the contract was made the parties for their mutual advantage selected the most invariable known standard of value as the medium of payment—and this in view of the power of the Government to adopt other standards as money or to coin its credit.

That when it was afterwards found expedient to issue Treasury Notes, and to declare them to be money and a

legal tender in payment of all debts, (except duties upon imports and interest upon government bonds, &c.,) they were not declared to be equivalent to gold, either in express terms or by necessary implication.

That on the contrary, the statute expressly recognizes a possible difference in value between the two kinds of money. That the large amount of money required by the Government at or about the time the issue of notes was authorized and the small amount of coin then in circulation, made it probable that there would be a difference in value.

That the definite laws which determine the relative values of things, made it certain that if the amount of notes which would probably be required, were, in fact, issued—they would depreciate in value relatively to coin.

That, as the Government had, at the time the contract was made, provided gold and silver coin for use as money, and had declared its preference for that medium of payment in its own dealings, the parties were apparently justified in their choice. That it was in fact not morally wrong for either party to choose coin. That it was not against public policy to do so, and that such a choice, if made by them or any conceivable number of individuals in their dealings, could possibly then, or at any future time, imperil the safety of the Government, or embarrass the action of any of its departments.

That at the time the contract was made, it was more beneficial to both parties to select gold and silver as the medium of payment.

That so long as a difference in value exists between the two kinds of money, payment in any other kind than coin must occasion loss to one party or the other—while on the other hand, if satisfied in coin, no loss to either is apparent.

If the government has not declared the two kinds of money equivalent, the judgment of the Court of Appeals

deprives the plaintiff in error of a substantial right under and protected by the Constitution and laws of the United States.

If this Court has no power to revise that judgment, the regulations which Congress has made of the value of money cannot be enforced in any State.

From what has been stated, it is apparent that no progress can be made towards a definition of the rights of the parties until it be ascertained whether legal tender notes have been declared to be equivalent to gold.

In all the cases which have been reported which conform to the decision below, (and they are numerous) it has been taken for granted that this question is to be answered in the affirmative.

So far is it from being conceded that the position should be assumed as true, that the plaintiff in error has all along claimed, and it has been almost his sole objective point, to prove that it should be answered in the negative.

It is not proposed in this paper to discuss that question—the Court is referred to the discussion of it in the opinion of Mr. Justice Grover, delivered in the Supreme Court, and to the very carefully prepared arguments of Mr. Selden, and of the present counsel for the plaintiff in error, in the Court of Appeals. They are intended to be submitted herewith.

They present in a connected form, all that can now be urged to prove the propositions which they were framed to prove.

It is claimed for them that the proof they furnish amounts to demonstration, if indeed it be admitted that experience has shown that political economy is fairly entitled to rank as an exact science.

Supplementary to what is stated in these arguments, three topics will be alluded to.

1st. The jurisdiction of this Court to revise the judgment.

2nd. The examination of the question whether the contract is one for the payment of a debt—in chattels.

3rd. A brief review of the prevailing opinion in the Court of Appeals and a notice of some of the cases which have been reported since the argument in that Court.

THE JURISDICTION OF THE COURT TO REVISE THE JUDGMENT.

It is consistent with the theory of the Constitution that this Court should have jurisdiction in this case. Congress having power to coin money and regulate its value, it is fit that the Federal Courts should decide all questions which may arise in any state involving the construction of any of these regulations. Because, if they are misconstrued in any local court, a uniform effect can not be given to them in all the states.

Perhaps it will be conceded that no controversy can arise in which the construction of these regulations is necessarily involved—in which a state court can misconstrue them without depriving one party to the controversy of some right which he claims under the regulations in question.

At all events, in this case, the plaintiff in error claims that he is entitled to gold and silver coin, or their equivalent—whether the Treasury notes tendered are an equivalent to the sum in coin, specified in the contract, is the question presented, and it depends for its solution upon the construction of the acts of Congress which are referred to.

It being expressed in the organic law that the judicial power of the United States shall extend to all cases in law and equity, arising under the Constitution and laws of the United States—it would be strange indeed if the definition

of the jurisdiction of the judicial power made by Congress, and intended to conform to the spirit of the Constitution, should be found to be so narrow as to exclude the class of cases to which this is claimed to belong.

But the 25th section of the judiciary act provides that a judgment may be re-examined where is drawn in question the construction of any clause of the Constitution, or of a statute of the United States, and the decision is against the title, right, privilege or exemption specially set up or claimed by either party under such clause of the said constitution, statute, &c.

Here, it is certified and stated by the Court of Appeals that in the record and proceedings was drawn in question the construction of certain provisions of the Constitution, and of certain statutes which are designated, and that the decision was against the right, title, privilege and exemption specially claimed under them by the plaintiff in error.

As the certificate states that a question within the terms of the 25th section did arise and was decided, it is sufficient under the authority of Armstrong *v.* The Treasurer of Athens Co., 16 Peters, 281, 283, 284.

Independently, however, of the certificate, it clearly appears in the record and proceedings that a question within the terms of the 25th section of the judiciary act, not only might have arisen and been decided, but in fact, did arise and was decided; that the judicial mind of the Court was exercised upon such a question; that the judgment could not be what it is, had not an act of Congress been misconstrued and the plaintiff in error deprived, by the decision, of a right which he claimed under it.

A review of the decisions in this court, in which the question of its jurisdiction under the 25th section has been presented, shows that although the classes defined in which judgments of state courts may be revised are three, the cases brought before it in respect to the distinctive feature which is to be noticed, resolve themselves into two.

1st. Where is drawn in question the validity of a state law.

2d. Where is drawn in question the validity or the construction of a federal law.

The distinctive feature to be noticed in respect to these two classes of cases is, that in the first class the essential jurisdictional elements are, as may be inferred, and as is verified by experience, not ordinarily presented by the pleadings and evidence, are faintly suggested or not at all in the record of the proceedings below and are frequently, if not most frequently, first brought forward and urged in the heat of controversy in an ultimate effort to reverse here a judgment, which, in fact, depends upon a question of local law. The greater number of the reported cases which have been dismissed for want of jurisdiction are of this class.

The cases on the other hand which present questions as to the validity or construction of federal statutes ordinarily in every stage of the proceedings below, show independently of bills of exception, formal suggestions or certificates that the essential jurisdictional elements are present.

It was in such cases, to wit:

Owings *v.* Norwood's lessee, 5 Cranch, 344.
Smith *v.* State of Maryland, 6 Cranch, 286.
Martin *v.* Hunter's lessee, 1 Wheat., 304.
Miller *v.* Nichols, 4 Wheat., 311–315.
Harris *v.* Dennie, 3 Peters, 292.
Davis *v.* Packard, 6 Peters, 41.

that expressions were used, induced by this distinctive feature—expressions which seemed to indicate that the jurisdiction of the Court was broader than it is, and which rendered necessary a more formal statement of the conditions necessary to sustain a writ of error in this Court.

Crowell *v.* Randell, 10 Peters, 368.
Armstrong *v.* Treasurer, &c., 16 Peters, 281.

This incident in the history of the adjudications upon the subject is alluded to with a single purpose to illustrate the fact that cases of this class have generally, and will ordinarily present, without any formal statement, a question which this Court has jurisdiction to review.

Upon the facts stated in this record, it is impossible that the decree should be what it is, and the acts of Congress referred to, not be drawn in question and a right denied which the plaintiff in error claimed.

The case has no affinity with those where the judgment below depends upon a point of local law, or where the error assigned here may be one which was not committed in the state court.

So distinctly was the claim to the protection of the federal law presented, that even if the decision had turned upon other grounds than the error alleged, this court would revise the judgment as in

The State of Minnesota *v.* Bachelder, 1 Wallace, 109.

The true and rational rule is, that the court must be able to see clearly from the whole record that a certain provision of the constitution, or an act of Congress was relied on by the party who brings the writ of error, and that the right claimed by him was denied.

Bridge Proprietors *v.* Hoboken Co., 1 Wall 140.

Although in the record the right claimed by the plaintiff in error is derived *immediately* from federal laws, yet had it been otherwise—had the plaintiff's right been only protected by the federal law, as was suggested in The Mayor, &c., of the city of New Orleans *v.* Armas, 9 Peters, 223, 234, it would still have been within the jurisdiction.

There, if the title actually assailed had been defeated while it was entitled to the protection of the treaty ceding Louisiana, the jurisdiction would have been sustained, although that title was in fact derived from a private source.

Chief Justice Marshall said, "the language of both instruments, (the Constitution and the judiciary act) extend the protection of this court to rights protected by the Constitution, treaties or laws of the United States, from whatever source those rights may spring."

To confer jurisdiction, it is only necessary that in defeating the plaintiff's title, some act of Congress must be misconstrued, as is illustrated by the case of Neilson *v.* Lagow, 12 Howard, 98. It was held that where land was conveyed to trustees for the purpose of paying a debt due to the United States, and the highest court of a state decided against a title set up under that conveyance upon the ground that the deed was in violation of an act of Congress, (forbidding purchases in certain cases) this court has jurisdiction under the 25th section of the Judiciary act to revise the decision.

It cannot be necessary (in order to distinguish this case) to cite those where writs of error have been dismissed, because the rights of the parties were determined on a point of local law, not in conflict with the federal constitution, or because a mere question of boundary was stated or because the state court refused to exercise jurisdiction, or failed to specify which state law was claimed to be void—or because the plaintiff in error omitted to claim in the state court what he asked here, or because the decree complained of was consistent with the construction of the federal statute contended for by the party appellant. All those cases differ so widely from this, that the points of difference are self evident.

Nor does the case of Roosevelt *vs.* Meyer, 1 Wallace, 512, have any analogy to this.

The plaintiff in error, Roosevelt, was the holder of a bond and mortgage payable in currency. He presented no question in the State Court, calling for the construction of the act of February 25th, 1862, or any other act.

The only question was, were the said notes of the United States a legal tender? The only point raised was the validity of the act of 25th February, 1862. He conceded

that if that act was valid the defendant was entitled to the right he claimed.

Here the questions are different. In the State Court the plaintiff in error assumes the validity of the act of February 25th, 1862. His right to the medium of payment selected depends upon the regulations of Congress.

He does not deny that the notes are an efficient legal tender. He claims a right to receive an amount equivalent to his debt in coin, under the legal tender act, under the act providing gold and silver coin, under the whole system of acts, construed in reference to each other.

Whenever the right of an individual depends upon a statute, the construction of the statute is necessarily drawn in question in every judicial definition of the right, whether the true construction be obvious or obscure. The jurisdiction of the Court to solve questions of this nature cannot be affected by any consideration of the comparative difficulty of solving them.

Had the acts providing coin stood alone, the right of the plaintiff in error to coin would be very plain. If the true construction of the legal tender act is more difficult to be ascertained than that of the gold providing acts, and the plaintiff's claim under it to an equivalent to coin be more obscure, neither that difficulty nor that obscurity furnish any reason why this Court should not have jurisdiction.

Under this general head one point remains to be noticed.

The contract specified gold or silver coin, lawful money of the United States.

Jurisdiction cannot be affected by the consideration whether or not the decision turned upon the special words of the contract. The plaintiff in error claims that the words "lawful money," &c., are descriptive of the coin. If the decision was that the words lawful money, &c., are not descriptive of coin, but import any inferior currency—and (while conceding that the tender proved would not satisfy a contract calling for gold coin) that the tender satisfied the contract, because the contract does not call for coin:—upon this hypothesis the Supreme Court must have jurisdiction to revise the judgment, or the whole spirit of

the Constitution and of the 25th section of the Judiciary Act would be violated.

It would be exercising a discrimination dangerously nice to say, upon this hypothesis, that the decision turned on the obscurity of the contract—not of the statute. When the contract was made the subject was free from doubt, and the enactment in 1862, was the first incident which raised a doubt. Who will say that the doubt is suggested by the contract rather than the statute?

A remarkable precedent in this Court exists to shew that no state court will be permitted to nullify the judicial protection intended to be given to all claims depending on the Federal law by merely declaring that it does not regard the claims asserted as entitled to that protection.

Bridge Proprietors *v.* Hoboken Co., 1 Wallace, 116, 146.

Jefferson Branch Bank *v.* Skelly, 1 Black, 436.

If the decision in the state court in the latter case, that what was claimed to be a contract inviolable by state legislation, was not a contract, had sufficed to defeat appellate jurisdiction here, it might well be asked (nearly in the language used by this court) what use would the appellate power be to the litigant who feels himself aggrieved if this court could not decide independently of all adjudication by the state courts, whether or not the phraseology of the instrument in controversy gave a right entitled to the protection of the constitution, notwithstanding a contrary conclusion by the Supreme Court of the state?

See also the State of Minnesota *v.* Bachelder, 1 Wallace, 109.

THE CONTRACT IS NOT ONE FOR PAYMENT OF THE DEBT—IN CHATTELS.

The proposition denied, was first stated by the Supreme Court of the State of New York, in this case, at Buffalo.

In a community possessing money established by law, the

conduct of one who agrees to pay a debt in chattels, appears to be irrational, unless the circumstances which affect him be regarded, and a rational motive can be inferred from them—as, for example, if one agrees to pay five hundred dollars in "lime," or in "good judgments, on good men, without relief from valuation or appraisement laws."

The reason is, that the Government wisely exercising its prerogative, may be presumed to have provided money convenient for the payment of the debts. A citizen will ordinarily and rationally avail himself of it for that purpose

Accordingly, we find, that in this country a chattel note has never been given except under special and peculiar circumstances, varied it is true, but always peculiar, and that no one ever fails to pay a debt in money if he can.

A chattel note invariably resolves itself into "barter," the form trade assumed before money was contrived, and which is now only resorted to from necessity, existing in every case in which it is employed but varying in degree in particular cases.

The only rational motive a lime-burner can have in promising to pay a certain sum in lime; a weaver in cloth; a lumber-man, in lumber; a founder, in castings; a farmer, in grain; a trader, in notes of other men; or a broker, in stocks or scrip of variable value, is, that he who makes the promise is so peculiarly situated that he can command a supply of those articles, for the purpose of making the payment more readily than he can command a supply of money.

It is impossible, with ordinary care, to mistake the motive of every one of these transactions. It is important and easy to show that the motive is always the same. With that intention the note at the foot of this page has been prepared, which presents an indiscriminate collection of reported cases, with their prominent features. See Note.

NOTE.—Jerome *vs.* Whitney, 7 J. R., 321.—A chattel note made at Aurelius, to pay $60, in neat cattle, in one year, at cash price. Saxton *vs.* Johnson, 10 J. R., 418, to pay $215, in neat stock, at the appraisal of men, to be delivered at the village of Norwich, two years and six months, after date. Thomas *vs.* Roosa, 7 J. R., 462, in Sullivan Co., N. Y., to pay in a good horse to be worth with saddle and bridle $80, and goods out of the

In Brookes *v.* Hubbard, 3 Conn. R., 58, the contract ran as follows:

BERLIN, March 9, 1818.

"Twelve months after date, I promise to pay Hezekiah

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store $20. Lansing *vs.* McKillop, 3 Caines, 286, to pay $40, worth of merchantable boards for a horse. Newton *vs.* Galbraith, 5 J. R., 119, to pay $10 in produce, (hay) to be delivered at his house, in Jericho. Barns *vs.* Graham, 4 Cow., 452, by a sawyer, at Italy, to pay $127 in good merchantable lumber, an equal proportion clear stuff, in one year. Lobdell *vs.* Hopkins, 5 Cow., 516, for a job clearing thirty-five dollars and ninety-five cents, in farm produce, at Moscow. Gilbert *vs.* Danforth, 6 N. Y. R., 585, by a founder, at Ghent, to pay $362 50 in castings. Rice *vs.* Churchill, 2 Denio, 145, by a sawyer, at Spafford, to pay $50 in lumber. Vance *vs.* Bloomer, 20 Wend,, 196, by a clothier to pay $44 80. in ready made clothing. "N. B. Clothes will not be made to measure." Briggs *vs.* Sizer, 30 N. Y. R., 647; an acceptance of an order for carrot seeds, given under an arrangement to exchange seeds. Fletcher *vs.* Derrickson, 3 Bos., 181, for the price of a paper mill, payable in paper at 3½ cents per pound. Carleton *vs.* Brooks, 14 N. H., 149, by a farmer $75 in grain. Elkenton *vs.* Fennimore, 13 Pa. State, R, (1 Harris) 173, for $37 50, payable in "painting, glazing, tailoring or beef." Williamson *vs.* Sems, 22 Ala. R., 511, $26 to be paid in "solvent notes or accounts of other men." Draker *vs.* Schreiber, 1 Miss., 602; $63 in lime from my kiln. Parker *vs.* Marshall, 10 Ind., 20, payable in railroad scrip. (of uncertain value) Brown *vs.* Richardson, 1 Bos., 402; eight notes payable in "merchandise on demand." Stewart *vs.* Morrow, 1 Grant's Case, Pa., 204; $80 31, payable in iron and nails, at Pittsburgh, at manufacturer's prices. Musselman *vs.* Storer, 31 Pa. St., R., 265; to pay $100 or deliver two black horses. Stevens *vs.* Adams, 45 Maine, R., 611, $71 in cash or peddlers truck. Barrett *vs.* Ellis, 6 Jones, N. C. R., 550; $150, to be discharged in any good trade, to be delivered at my Flat Creek plantations. Nesbitt *vs.* Pearson, 33 Ala., 665, by a manufacturer in bar iron. Dumar *vs.* Hardwick, 19 Texas, 238, by a grocer $225, in groceries. Blount *vs.* Ralston, 20 Texas, 132, by a sawyer in lumber. Traumell *vs.* Pilgrim, 20 Texas, R, 158; payable in horses $560. Pierce *vs.* Spader, 13 Ind., 459, payable "*in good judgments on good men, without relief from valuation or appraisement laws.*" Williams *vs.* Triplet, 3 Clark, 518; $250 in brick. Tibbets *vs.* Gerrish, 5 Foster, N. H., 41; forty dollars in hard wood. Cockrell *vs.* Warner, 14 Ark., 345; payable in cotton by a planter. Dun *vs.* Marston, 34 Maine, 379; $50 in pine shingles, by a store-keeper. Streeter *vs.* Henly, 1 Carter, 401; a horse worth $40 and cash notes for the balance. McKernon *vs.* McCormick, 2 Carter, 318; $20 in state scrip or plows, by a maker of plows. Wiley *vs.* Shoemak, 2 Greene (Iowa), 206, in flour. Gaines *vs.* Manning, 2 Greene, 251, in leather, by a tanner. Phillip *vs.* Cooley, 2 ibid., 556, in corn (Iowa). Cardell *vs.* McNeil, 21 N. Y. R., 336, $125 in a top buggy. Pratt *vs.* Graff, 15 Ind. R., 1, $201, "out of the mill and warehouse." Wade *vs.* Daniel, 15 Ind. R. 212; $500 in good notes, which are to be due in eighteen months. Peddicord *vs.* Whitton, 9 Iowa, R., 471; $110 in wagon lumber, "at our shop." Slivey *vs.* Washburn, 12

Brooks, two hundred and fifty dollars, in brown cloth shirting, at the price of thirty cents per yard, &c."

Hosmer, Ch. J., says: "The contract in question is one of the forms of engagement between manufacturers and their workmen, and from their frequency is perfectly intelligible."

In Pinney *vs.* Gleason, 5 Wendell, 303, the promise is to pay John Pinney seventy-nine dollars and fifty cents, in salt, at fourteen shillings per barrel, in good boating order. See, also, Clark *vs.* Pinney, 7 Cowen, 681.

The only motive in the three cases cited was, to give the promisor the right to pay in money, if the specified chattel, at the maturity of the notes, was dearer in the market, or to deliver the chattel if it was cheaper than the price stated. The motive is rational, and the contract a proper one for a manufacturer to make with his employees, for his own reasonable protection, and one proper for the employees to make. If necessary to secure constant employment it is not unreasonable that they should share, to a limited extent in the risks of a fluctuating market.

The plaintiff in error complains that any resemblance should be said to exist between the contract set forth in the record and these contracts or any chattel note.

This transaction is not barter; it is a loan of money, to be repaid in money; the plaintiff in error acting in a representative capacity—it being his duty to avoid specula-

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Ver., 580; $57 in good merchantable hay, wheat, oats, rye, buckwheat or barley. Peck *vs.* Hubbard, 11 Ver., 612, for eighteen sheep. Gilman *vs.* Morre, 14 Ver., 457; $50, payable in good well furnished plows, at the defendants' shop. Elkins *vs.* Parkhurst, 17 Ver., 105; good merchantable sap buckets, or $20 worth of leather at maker's shop. Rockwell *vs.* Rockwell, 4 Hill, 164, $65 in hemlock saw logs. Fleming *vs.* Potter, 7 Watts, 380; $40 in castings or plows "at our furnace." Erwin *vs.* Cook, 2 Dev., 188; $351 74, to be discharged in good whiskey, bar lead or castings, at the maker's house. Plowman *vs.* Riddle, 7 Ala. N. S. R., 775, by a tanner to pay $300 in leather. Orr *vs.* Williams, 5 Humph,, 423; $30 in a mule, horse or colt at a valuation. Laurens *vs.* Dougherty, 5, Yerg., 435, payable in cotton. Brown *vs.* Simpson, 6 Yerg., 295; $150, in cash notes on solvent men. Barrett *vs.* Allen, 10 Ohio, 426; $1,000, in wollen cloth, at fair wholesale factory price, the note is payable eight years after date, and is for a part of the purchase money of the factory.

tion with the funds entrusted to him, and it was the motive of both parties to measure their relative rights and obligations by the most invariable standard of value.

Chattel notes are not money contracts. In Vance *vs.* Bloomer, 20 Wendell, 196, Cowen, J., says: "There seems to have been an effort by him (the holder), for some reason not justifiable, at least not justified, so to shape his demand as to turn the instrument in question into a money claim.

In Vermont, such a note is said at maturity to "run into money.

Perry *vs.* Smith, 22 Ver., 20.

It is reasonable that a note for $100, payable in salt—or in salt at fourteen shillings a barrel—if not satisfied at maturity, should be paid in any money current in the country, because that is the true construction of the agreement. The promisor has not availed himself of the provision made for his convenience that his creditor shall accept salt in lieu of money, and relieve him from the trouble of converting salt.

It is unreasonable that a note for $100, payable in gold coin, lawful money, &c., should be paid in a currency inferior in value, because the parties to it intended to avoid the inequality and unfairness of such a payment.

If the theory be true, that a promise to pay $100 in coin is a chattel note, extraordinary confusion will follow, because hitherto such contracts have ordinarily been regarded as money contracts.

If the theory be true, a note payable in coin (so long as a difference in value exists between coin and the inferior currency) it is not negotiable, nor is the maker entitled to days of grace. Gold coin being a ponderous article, it is the duty of the maker, before maturity, to inform himself where a tender can be made.

These burthensome incidents must be held to have attached themselves silently to contracts in this form simultaneously with the development of a sensible difference in the relative values of gold and legal tender notes, will flourish so long as that difference exists, and when by degrees it shall be

obliterated they will as silently disappear, and notes payable in gold coin will once more be treated as money contracts.

A Review of the Prevailing Opinion in the Court of Appeals.

The arguments presented to that Court (and which are now submitted) show very clearly the position which the plaintiff in error assumed, to wit:

"The true construction of the contract is, that it is an "agreement for the repayment of the *loan in the currency* "*selected by the parties* and designated as the medium of "payment."

See the 1st page of Mr. Townsend's argument.

The idea was clearly illustrated that several kinds of currency, of different relative values, may co-exist, and that citizens may choose between them a medium for the settlement of their contracts.

Most distinctly did he refer all his rights to laws—natural and conventional—which define or affect the uses and properties of money, and its value in reference to other things.

The transaction presented was a loan of money—to be paid in money.

Keeping this position clearly in view—attention is called to the reasoning of the learned Judge who delivered the prevailing opinion in the Court of Appeals.

He misunderstood the plaintiff in error's position in this essential particular; mistakenly attributing to him language which he did not use—and a construction of the contract not merely opposed to the whole spirit of his argument, but directly the opposite of that which he in fact claimed.

The following sentences in the opinion are referred to:

"The counsel for the defendant (plaintiff in error) claims, in his printed argument, that the promised coin is not *currency*, but is a commodity, and is so treated by the contracting parties."

"This is asserted, in the argument referred to, to be the radical position on which the claim rests, and it manifestly is so. It is the essence of the entire argument submitted in his behalf."

"Upon the assumption that the parties treated the promised coin as a commodity, and not as currency, the defendant encounters serious difficulties." (Opinion, p. 26, fols. 100, 101.)

"This (the construction given) will appear to be the true construction of the contract, if we exclude, as we should do, upon the defendant's (plaintiff in error's) assumption the idea that the promised article possesses the attribute of currency, and if we regard it as a commodity merely." (Opinion, page 27, fol. 102.)

Thus considered, the learned Judge concludes, the effect of the agreement is precisely that of a chattel note. (Opinion, page 27, fol. 104.)

If the plaintiff in error is not responsible for the assumption attributed to him, he is not concluded by the inference that the contract is a chattel note.

That this attribution must have arisen from some misapprehension of his argument is rendered very probable by a reference to the opinion at page 28, fo. 106, where he is represented as treating the promised article (coin) as *currency* for certain purposes. "As a *currency* for the purpose of fixing the amount or quantity of the commodity to be paid;" and again at page 28, fo. 107, where the fallacy of his reasoning is said to consist "in treating the stipulated article as *currency* having a legal value as such, while assuming to treat it not as currency, &c.

The plaintiff in error does not concede that his argument was presented as stated in fo. 106-107, page 28,—or that he is justly chargeable with the contradiction to himself there imputed.

He claims, however, from the statement at fo. 106-107, that it is very improbable that he failed at any time to treat the promised coin as currency, possessing all the attributies of currency, or that he is responsible for the theory of a chattel note as applied to this contract, or any of the absurd consequences which would follow from such an application.

A reference to the plaintiff in error's argument relieves the subject from all doubt, and shows clearly that his views were misunderstood. See also the statement in the opinion at fo. 114, page 30, that the assumption is groundless.

Even the language quoted at fo. 100, page 26, and which, it is said, was applied to this contract, was not so applied.

The words used by Mr. Selden are (page 21 of his argument) "In such cases, where the parties have contracted for the delivery, specifically, of one of the several *kinds of currency*, they do, by the contract, treat the article to be delivered (as it is practically in commercial transactions, treated, in fact) not as currency, but as a commodity, subject to purchase and sale like wheat or cotton, according to its value in the practical currency of the day—such are all the contracts at the present day for the purchase and sale of gold, and are not these contracts valid?"

These phrases, taken alone, do not justify the idea that the author of them ever failed to regard coin as possessing all the attributes of currency. Indeed in the text he expressly refers to it as currency, and the connection shews that he was then illustrating the effect of dealings in different kinds of *money* of different relative values.

So far from the idea occurring to him that the attribute of currency was to be excluded from coin when viewed in its relation to inferior issues—he was only thinking of the new relation which it had assumed—to what?—not to things existing prior to the act of February 25, 1862,—but to the creature of that act.

It is hoped that enough has been stated to shew that none

of the conclussions stated in the opinion from the 100th folio, to the 114th folio are sustained; because the contract in question is essentially a money contract.

The learned Judge has further argued that treating the contract as a money contract, the stipulation to pay in coin is of no effect.

Fol. 115.

1st. Because metallic coin was the only money then recognized by our laws as a tender in the payment of debts.

The answer is found at fol. 123, page 23, of the same opinion. "The parties to the mortgage in this case are presumed to have contracted in full knowledge that Congress had power to authorize the issues of paper money and to declare it a lawful tender in payment of pre-existing debts as they did by the act of 1862."

2nd. Because to give the stipulation effect would be to give effect to a contract framed to avoid the effect of the Legislation of Congress—because to except this contract from the operation of the act of 1862, would be to annual the Legislation of Congress.

Fol. 118 to 120, page 31.

The answer is, that the act of 1862 in fact applies to the liquidation of the sum due upon this contract; that the plaintiff in error's claim does not affect the efficiency of Treasury notes as a tender; that in commerce it is ordinarily a matter of indifference in what currency contracts are made payable, and that the right of selection, if conceded, can never be injurious to the Government, or annul the effect of its legislation.

3d. Because the Government might have debased the gold and silver of the country.

The answer is, that Congress did not exercise this power. Nor is it to be understood, from the regulations of Congress authorizing the issue of legal tender notes, that they are equivalent to gold.

The final concession in the opinion, at folio 125, page 32, that an "agreement made since the

act of 1862, for the payment of a specified sum in coin, in consideration of a loan in coin, or upon any other equivalent consideration, and in view of the difference in market value existing at the time between coin and Treasury notes having the same legal value, may differ materially from the present case—that the validity of such an agreement for some purposes is distinctly recognized by the act itself, and in many cases contracts of that character may accord with and even aid the policy of the statute," —if it be understood as a concession that such a contract may be valid, goes far to concede all that the plaintiff in error has claimed.

Comparing such a contract with the one presented by the record, it will be found that the question of relative dates is unimportant.

If the one be a chattel note, so is the other. If the one be against public policy, so is the other. If a contract made since 1862 be valid, it will be conceded that the parties had a right to recognize an existing difference of value between two kinds of currency.

It is respectfully submitted, that before the passage of the legal tender law, they had an equal right to recognize a possible future difference and frame their contract accordingly.

Recent Cases.

Murray *v.* Harrison, 47 Barbour, 484, is cited as an illustration of the extraordinary confusion which results from an application of the law, as expounded by the Court of Appeals.

The enlightened, and conscientious author of the opinion, when declaring the construction of a bond, made in 1846, to *secure the repayment* of a *loan of money*, conditioned for the payment, in three years from date, of $4,000 dollars in gold or silver coin of the standard by which the coins of the United States were regulated by the laws existing on the 26th day of May, 1846, perceived a current of decisions running counter to the laws of trade. On the one hand, the decisions asserting in every form of emphatic

statement that, as money, gold and notes are, in fact, equivalent, and that it is impossible to discern a difference between them.

On the other hand, the laws of trade making a palpable difference in their relative value.

In the attempt to apply the law, as expounded by the Court of Appeals, to the contract before him, without deciding at the same time that gold contracts, to wit, gold, notes and checks, gold loans, and sales of goods for gold can be satified in legal tender notes as the equivalent of gold; he was forced to ascribe to the obligor and obligee on the bond named an unreal motive.

Ignoring the evident fact, that the parties were dealing in money, the obligee lending money, which the obligor was to repay—failing to observe that the motive, in selecting gold coin of a certain standard was, and could only be to refer their mutual rights and obligations to the most invariable known standard of value, he ascribed to the parties a different intention, to wit, that the obligor might pay the debt in a commodity, actually capable of being used as money, but essentially a commodity. Instead of construing the contract as a money contract, he declared it to be a chattel contract—like a chattel note.

The construction that it is a chattel bond is no less erroneous in principle, because the chattel referred to is golden, than it would be if it were wheat.

If the parties contemplated a possible solution of the contract in something else than money—it must have been only because the party whose duly it is to pay the debt conceived that it would be more convenient to him to pay it in something else than money; as a farmer in wheat, a lumber man in lumber, a miner in ingots, &c.

It was the principle of "barter" so far as involved in a chattel note, which he applied to the contract.

It has been shewn above that his own convenience is the only motive which ever determines one to make a chattel note.

Evidently, in 1846, the obligor was not in fact so placed in reference to the circumstances which surrounded him as to make anyone believe that the motive of the obligor and obligee in referring to gold coin of a definite

standard, was to consult the convenience of the obligor in being able in command a quantity of bullion to make his payment, rather than the ordinary currency of the country.

If that was not their real motive it is wrong to impute it to them for the sake of any argument. The motive which should be imputed to them is that apparent on the face of the contract—to make and receive payment in money of a certain standard, because it measures more fairly and equably than any other thing their relative rights and obligations.

Thompson *v.* Riggs, 5 Wallace, 663.

It was observed in this case at page 679, that proof was entirely wanting that the words which were written against the several deposits in the pass-book referred to were written for any such purpose as was supposed by the plaintiffs.

It is stated at page 678, that "when the banker specially "agrees to pay in bullion or coin, he must do so or answer "in damages for its value."

At page 680, that "it is not pretended that the evidence "showed a special deposit or any special contract."

Thayer *v.* Hedges, 23 Ind., 141.

This case illustrates the tendency to ignore the intention with which contracts are made payable in coin.

The contract was a note for the payment of $500 in gold. The maker of the note evidently intended "gold coin." The Court, however, imputed to him another motive; that is a preference for a chattel as a medium of payment, using the language "the contract was not for $500 in gold coin but in 'gold.' Gold in ingots or dust from the mine would have satisfied the contract in our opinion, and on failure to deliver it the measure of damages under this contract is $500, with interest from the date, etc."

Lane *v.* Gluck-auf, 28 Cal., 288.

This case is in harmony with the views of the plaintiff in error.

Appel *v.* Woltman, 38 Missouri, 194.
Riddlerbarger *v.* McDaniel, 38 ib., 142.
Reese *v.* Stearns, 29 Cal., 273.

These cases are selected as presenting most distinctly the fallacy which it is the object of the foregoing arguments to expose.

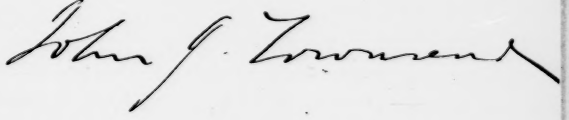
It is in this form, "These notes are lawful money, and a legal tender on the payment of private debts: it results as a logical necessity, that in judgment of law a given number of dollars of one kind of lawful money is the equivalent of the same number of dollars of another kind of lawful money of the same United States."

If the foregoing be a fallacy, the conclusions which are based on it are erroneous.

In this paper statements have been made in a positive form which are inconsistent with the carefully formed opinions of many eminent men—if thus made with a view to self-assertion it would be unpardonable—a profound consciousness of a recognition of the truth, although it goes far to excuse, does not of itself justify them. The justification is in the fact that the subject is within the domain of an exact science—the laws applicable to it are ascertained by a reference to universal experience—they are certain. If error exists in any statement, it is and must be self-evident.

New York, Dec. 31, 1867.

JOHN J. TOWNSEND,
Of Counsel for the Plaintiff in Error.



Supreme Court of the United States.

FREDERIC BRONSON,

Executor of the last will and testament of ARTHUR BRONSON, deceased,

Plaintiff in Error;

vs.

PETER RODES.

In Error to the Court of Appeals

OF THE STATE OF NEW YORK.

OPINIONS IN THE STATE COURTS.

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1867.

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vs.
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IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

THE following are the opinions in this case in the Supreme Court of the State of New York, at a general term, held at the City of Buffalo, in the County of Erie, in May, A. D. 1866: and subsequently in the Court of Appeals, at a term held at the City of Albany.

There were no other written opinions while the action was pending in the State Courts.

New York, Dec. 14, 1867.

JOHN J. TOWNSEND,
Of Counsel for Plaintiff in Error.

4 **Opinion of Justice Daniels,**

AT A GENERAL TERM OF THE SUPREME COURT, OF THE STATE OF NEW YORK, HELD AT THE CITY OF BUFFALO, IN THE COUNTY OF ERIE, IN MAY, 1866.

STEPHEN KIMPTON,
Appellant.

vs.

5 OLIVER BRONSON,
Respondent.

} *See Note.*

This action was brought to procure the satisfaction of a mortgage executed by the plaintiff, together with his wife and delivered to the defendant. The mortgage, and the bond accompanying it, were given to secure the payment of one thousand eight hundred dollars, "in gold or silver coin, lawful money of the United States of America," on
6 the first day of July, 1864, with semi-annual interest thereon from the fourteenth of May, 1859, which was the day of their date, according to the terms of ten promissory notes given for such interest in coin as aforesaid. The bond and mortgage were conditioned that if the plaintiff should pay the sum of money secured, in gold or silver coin as aforesaid, at the times and in the manner mentioned therein, they should then and from thenceforth become void. By the terms of the bond the principal and interest secured were payable at such place in the city of New York as the
7 defendant should by writing, appoint, and in default of such appointment at the City Bank in said city, no appointment in writing of the place of payment was made by the defendant, and on the thirteenth day of August, 1864, the plaintiff deposited to the defendant's credit in the City Bank of the city of New York, one thousand eight hun-

NOTE. The case of Rodes *vs.* Bronson, Exr., was argued and decided with this case. See the last clause of this opinion. Reported 45 Bar. Sup. Ct. Rep., 618.

dred and eighteen dollars in United States Treasury notes. This exceeded the principal and interest then due on the bond and mortgage the sum of two dollars, which was deposited to defray the expenses of discharge of the mortgage. At that time, one dollar in gold or silver coin was worth two dollars and fifty-five cents in United States Treasury notes in the city of New York. Notice of such deposit was given to the defendant on the fifteenth of August, 1864, and he was requested to execute a discharge of the mortgage. This he declined to do, on the ground that the debt secured could only be discharged by a payment of the amount in gold or silver coin. Upon proof of these facts the Court, or Special Term, dismissed the plaintiff's complaint, with costs. And from the judgment entered upon that decision the plaintiff appealed.

JOHN H. WHITE,
For Appellant.
HENRY R. SELDEN,
For Respondent.

DANIELS, Justice:—The different acts of Congress, under which the Treasury notes were issued which the plaintiff deposited to the defendant's credit for the purpose of paying and discharging the mortgage debt due to him, declare that such notes "shall be lawful money and a legal tender in payment of all debts, public and private, within the United States, except for duties on imports and interest on the public debt." United States Statutes at Large, vol. 12, 345, § 1, 532, § 710, § 3. Each act in this respect is substantially a counterpart of the others. Since the organization of the General Government, Congress has been in the habit of prescribing the combinations and weights of the gold, silver and copper coins, issued by virtue of its authority, and of declaring the extent to which they could be lawfully tendered in payment of debts. The composition and weight of the coins issued have not been entirely uniform, and owing to that circumstance not of the same intrinsic value, but still Congress has declared them to be of the same legal or nominal value of those coins possessing

greater intrinsic value, though limiting the extent to which they might be used as lawful tender for the payment of debts. In 1834, when the act was passed providing for the composition and value of gold coin, it was declared that such coin should be receivable in all payments, when of full weight, according to their respective values. United States Statutes at Large, vol. 4, 699, § 1. And in 1837 the act declaring the composition and weight of silver dollars, half dollars, quarter dollars, dimes and half dimes, provided that they should be legal tenders of payment, according to their nominal value, for any sums whatever. Vol. 5, 137, § 9, But three cent pieces, afterwards provided for, were declared a legal tender in payment of debts only to the amount of thirty cents and under. Vol. 9, 591, § 11. And when without changing the composition of the metals, the weight of the silver half dollar, quarter dollar, dime and half dime was reduced, their use as a lawful tender for the payment of debts was limited to sums not exceeding five dollars. These statutes, together with the others relating to the same general subject, are referred to for the purpose of showing that the gold and silver coin of the United States are not necessarily intrinsically worth their nominal values, but are made to bear an arbitrary or coventional value by the mere force of legislation. And in the exercise of its sovereign authority over this subject, Congress has the power of still further debasing the coin of the country, or reducing their weight, or both, as it may deem just and proper, and of prescribing that such coin shall be a legal tender for the payment of all debts within the United States. The only restraint upon the extent to which the power may be carried, is that which a general sense of expediency and justice imposes. The power itself is expressly conferred by the Constitution, which declares that Congress shall have power to coin money, regulate the value thereof and of foreign coin: Art. 1, sec. 8, sub. 5. Leaving the manner of its exercise entirely to the prudence and judgment of Congress.

But notwithstanding the fact that the Treasury Department of the government has frequently found itself com-

pelled to issue Treasury notes, under the power provided for 16
that purpose by Congress, they have never before the crisis
through which the country, owing in part to their assistance
has so fortunately passed, been raised to the standard of
money and declared a legal tender for the payment of debts.
The power to do that in this instance has been by very
many able and intelligent persons denied, and the exercise
of it denounced as a usurpation of authority. It requires
but a superficial retrospect of the events of the five years
just closed, to convince a candid and unprejudiced mind
that the Government must itself have failed, and been 17
overcome by the forces of the rebellion, if it had not been
for the warlike facilities which these notes placed at its
command. Without the power to issue them and to give
them the credit of money, its ability to perform sucessfully
the great duties committed to its charge would have been
withheld from it. Accordingly it was maintained by Con-
gress, in conjunction with the Executive that the obligation
to exercise the functions required in the discharge of such
duties, necessarily carried with it the power of providing
the means without which that could not be successfully ac- 18
complished. Whether that power is to be derived from the
provisions of the Constitution already mentioned, or the
power to borrow money on the credit of the United States,
or that of raising and supporting armies, or to provide and
maintain a navy, or supress insurrections and repel inva-
sions, or from all of them combined it is not neccessary
now to inquire. For the purpose of the present considera-
tion of this case, the existence of that power under the
Constitution must be assumed, to the full extent of the use
made of it by Congress. Because the controversy regard- 19
ing it has been already fully considered in the courts of
this State, and finally set at rest by the judgment of the
Court of Appeals, which triumphantly maintained it against
every conceivable objection. Metropolitan Bank v. Van
Dyck, 27 N. Y., 400.

The statutes defining the extent to which the coin and
Treasury notes of the United States may be rendered avail-
able as a tender for the payment of private or individual

debts, in no manner discriminate between them, except so far as the amounts that may be so used. Of the silver coins provided for by the acts of 1851 and 1853 the amount is limited. As to these, the limitations imposed are that three cent pieces shall not be lawful tender for an amount exceeding thirty cents, and the half and quarter dollars, dimes and half dimes, to an amount exceeding the sum of five dollars. No such limitation, nor any other whatever as to debts between individuals is placed upon Treasury notes. They are made a legal tender in payment of all debts, according to their nominal value. This is complained of as an arbitrary exercise of authority. But it is the same in principle, though it may, from the manner of its use, be different in degree as that which fixes and declares the value of gold and silver coin. In that case, it is not the commercial value of the article which alone determines its value as money, though that undoubtedly is an important element entering into the adjustment of it. But its value as money is determined by the legislative power of the country. That power declares that certain quantities of gold and silver metal, alloyed, moulded and stamped in the manner in which it provides, shall have a certain commercial value, which is ordinarily less than the real value of the weight and quality of the metals used. Under the exercise of that power, the coin acquires a greater value as money than it possesses as a marketable commodity.

Precisely the same power is used, though it may be differently derived, which declares and impresses Treasury notes with the value they purport to have upon their face. These notes are not altogether deprived of real or intrinsic value, for they were issued upon the credit of the government, and have the good faith and responsibility of all the people pledged for their redemption. The conviction of that being the case, though not perhaps quite as tangible to the senses, should produce an assurance of actual value for them, equal to that created by the intrinsic value of gold and silver. It was not a mere arbitrary value, therefore, which Congress provided them with, but one of an actual value, which at no remote day will extinguish the obligations they create with gold and silver coin.

That this value has been depreciated is certainly true, 24
but it was done without diminishing the obligation of the
paper, and in the absence of all improbability of its final
redemption. It is not paper alone of this description that
has been rendered liable to depreciation, though it is ordi-
narily more liable to it than gold or silver, for that has a
circulating value among all the civilized nations of the earth,
while paper is necessarily limited in its circulation to the
nation under whose authority it issues. But whenever the
value of property is inflated or reduced, that of gold and
silver coin is also correspondingly diminished or increased. 25
Changes of this nature frequently occur in all countries en-
gaged in trading or commercial pursuits, and they are
occasionally so great as to be productive of very distressing
financial consequences. On that account, debts contracted
when the prices of property are unusually stimulated, are
paid with greater difficulty and by greater sacrifices after
such prices have receded, while those contracted when such
prices are low, are more easily paid, and with less sacrifice
of property after those prices have again advanced In one
case, the debtor actually pays less to extinguish the same 26
indebtedness, than is required for the same purpose in the
other, though the actual amount of money used is the same
in both. Coin, through all the commercial changes it may
pass, retains the legal value impressed upon it under the
authority of the Government, even though the holder of it
may be unable to realize half as much with it at one time
as he could at another. The same considerations apply in
the same manner to the Treasury notes. The law has im-
pressed them with a legal value precisely equal with that
of gold or silver coin of the same denominations for the 27
purpose of paying individual debts with them, and it can-
not permit a discrimination against them, in favor of gold
and silver without allowing its authority to be substantially
annulled. However the fact may be as to the value as a
mere commodity, a Treasury note for the sum of one dollar,
is as completely a legal dollar as a piece of metal of a cer-
tain weight and quality, impressed as the law directs, is a
legal dollar. The one is no more so than the other for

those purposes, that the laws have declared them to be of equal value. Where those laws are supreme, that value must be observed and secured by Courts of Justice, for they are required to execute and carry the laws into effect as they are found, without indeavoring to accomodate or conform them to the accidental or unprincipled depreciations produced in the currency of the country by the tricks and devices of boards of stockbrokers. These laws place the paper dollars of the Government upon the same standard of value they do its gold and silver dollars, for the purpose of paying the indebtedness of one individual to another. They are a lawful tender for the payment of such debts, not for their value in New York or elsewhere, but for the value declared upon their face.

The next substantial point involved in this controversy is, whether the obligation of the plaintiff under the bond and mortgage resolved itself into a debt, so as to be brought within the operation of these laws. That term has been differently defined, owing to the subject matter of the statutes in which it has been used. Ordinarily it imports a sum of money arising upon a contract express or implied. (Matter of Denny, 2 Hill, 220.) In its more general sense it is defined to be that which is due from one person to another, whether money, goods or services; that which one person is bound to pay or perform to another. (Newell *vs.* People, 1st Selden 124.) Under these statutes it seems to import any obligation by contract, express or implied, which may be discharged by money through the voluntary action of the party bound. Wherever he may be at liberty to perform his obligation by the payment of a specific sum of money, the party owing the obligation is subject to what, in these statutes, is termed a debt.

If the obligation in this case had been such as required the delivery of one thousand eight hundred gold dollars, and not as it was, to pay one thousand eight hundred dollars in gold or silver coin, its construction must necessarily have been different. For then it would be in no sense a debt within the contemplation of these statutes, and could not be affected by their provisions declaring Treasury notes a

lawful tender for the payment of debts. In the case supposed, the obligation would regard dollars, not as currency, but as articles of traffic, or commodities merely. And it could only be performed by the actual delivery of the number and kind of dollars described in it. And in case of failure to perform it, the defaulting party would be liable for whatever value they might have at that time, as distinguished from Treasury notes. The damages to be recovered would be the market value of the articles agreed to be delivered. A demand of such a nature would not be a debt, and therefore not within these statutes, until its amount should be determined by a judgment of a court upon it. This distinction distinguishes this case from the obligations of bailees or carriers, who may undertake to carry and deliver specified quantities of gold or silver coin. The obligation is to carry and deliver the identical article received, and no other; and it can be only discharged either by making such delivery or paying the value in the market of the article agreed to be delivered. The same principle would apply to the case of a person who should unlawfully convert or appropriate the gold or silver dollars of another. For the purpose of satisfaction, the article converted or appropriated, though generally used as a currency, would be treated merly as property, and its highest market value allowed by way of damages. Until such damages are ascertained and determined by a judgment they do not in law constitute a debt, and therefore cannot be discharged under insolvent or bankrupt laws providing for the discharge of the insolvent or bankrupt. (Crouch *vs.* Gridley, 6 Hill, 250. Kellogg *vs.* Schuyler, 2 Denio, 73.) But in this case no specific dollars were to be delivered by the plaintiff to the defendant. His obligation was to pay a specified number of dollars, not to deliver dollars of a specified quality. And as such, it could be extinguished by anything possessing the legal value and character of that quantity of dollars. An obligation to pay in silver dollars can be well discharged by a tender of gold dollars; because the law, without regarding any difference between them in the market, has declared them of equal value for

32 33 34 35

that purpose. If it had not done that, the same quantity, value and form of gold would not discharge the obligation without the actual assent of the creditor; for its efficacy as a tender, by the mere election and act of the debtor, is derived altogether from positive legislation. Without that, neither gold nor silver coin would be a legal tender for the payment of debts in any case whatever, unless the contract expressly stipulated that it should be so. With such legislation, not only gold and silver, but everything else declared by it to be so, must be held by courts of justice a legal tender to the amount and value placed upon it by the law. For that reason they are bound to sanction and enforce the discharge of all such obligations as create debts, by the tender and payment of Treasury notes, precisely the same as though an equal nominal amount of gold and silver coin were made use of for that purpose. For the accomplishment of that result the law has made them the legal equivalents of gold and silver coins of the same denominations.

Any different construction would be productive of very great injustice, not only in this case, but in all those where the debtors had inadvertently promised payment of these debts in gold or silver. For if the creditor should be permitted to recover the market value of gold or silver, as distinguished from its legal value, he might, by recovering judgment against his debtor when the premium was the greatest, collect as much more than the real debt owing to him as that premium exceeded the market value of Treasury notes. For by holding his judgment and delaying its collection until the difference between the cheaper legal currency in which it would be payable and gold and silver entirely disappeared, it would be as easy for the debtor to pay them in the latter as it would in the former. And as he would be bound to pay in one or the other, the creditor would recover as much more than his actual debt, as Treasury notes were depreciated below gold and silver when the judgment was recovered.

The law intended to subject debtors to no such consequences as these.

No injustice will ordinarily result to the creditor from 40
this construction given to the statutes and covenants in question. For although the creditor may be compelled by it to receive payment of the debt due to him in notes depreciated below their nominal value in the market, the period of that depreciation will soon pass over, and their actual value be restored to that of gold and silver. And at all times, even when most depreciated, they have been convertible into the stocks and bonds of the United States, upon which the interest, and, at their maturity, the principal, were payable in gold and silver coin. No persons 41
have had less ground for complaint against Treasury notes as a legal tender, than the capitalist. For though by law obliged to receive them at their nominal value, he had the ability to invest them for the same amount, at legal rates of interest, and when the time for their redemption arrives he has the responsibility of the Government for their payment, whatever losses their depreciation may have entailed on those who received them for their labor and expended them for their sustenance; none of those losses have been borne by him, as long as the amount of his capital has 42
continued unimpaired.

That the covenant of the plaintiff in the bond and mortgage should be construed to be an obligation for the payment of money merely, and not for the delivery of eighteen hundred gold or silver dollars, is settled by authority in this State. That question was very clearly presented in a case entirely analogous to the present one, and disposed of against the position of the present defendant. The action there was upon three notes, similar in form, by one of which the defendant promised to pay the plaintiff seventy- 43
nine dollars and fifty cents, on the 1st day of August, 1822, in salt, at fourteen shillings per barrel, in good boating order. Upon the trial of the action the jury found a special verdict upon the principle that they were to be governed by the number of dollars and cents specified in the notes, and not by the fair cash value of salt per barrel at the time when the notes became due. The Court of Common Pleas gave judgment upon the verdict on this prin-

ciple, which the Supreme Court reversed. The case was then taken to the Court of Errors, where the judgment of the Supreme Court was reversed, and that of the Common Pleas affirmed. (Phiny *vs.* Gleason, 5 Wend., 394.) This decision necessarily settled the demand in that case to be a debt, when the defendant had failed to deliver the salt in which he had agreed to pay it. There is no difference in principle between that case and the present one. For it is not material what the debtor agrees to pay in, provided the agreement be that he will pay a sum certain. In that case the debtor had agreed to pay the money mentioned in salt at fourteen shillings per barrel. In the one at present under consideration to pay eighteen hundred dollars in gold or silver coin. The conclusion was the same in a case decided in Connecticut, where the debtor promised to pay $250 in cotton cloth at thirty cents per yard, for it was there held that the sum of money only could be recovered in the action. (Brooks *vs.* Hubbard, 3 Conn., 58. Fletcher *vs.* Derrickson, 3 Bosworth, 181.)

It can make no difference in the application of the rule prescribed by the statutes, that the bond and mortgage were executed before their enactment, for the rule is a general one, allowing all debts to be discharged by that which may be lawfully tendered at the time the payment of them may be made. When the consideration of this rule was incidentally before the Supreme Court of the United States, in an action for the equitable equalization of certain rents, made by a statute of the State of Virginia, Chief Justice Marshall stated it to be the law of the contract, that all moneys accruing under it which were not received during the currency of paper, would be payable in such other money as might be current at the time of payment. "According to the law which existed when the deed was executed, that consideration would be payable only in gold and silver coin, when gold and silver coin should become the only currency of the country." (Faw *vs.* Marsteller, 2 Cranch, 10, 1 Curtis, 428, 435–6.)

This principle has been applied to the payment of debts contracted before, as well as those contracted since. Trea-

sury notes were declared a legal tender, even though the laws of the contract provided for their payment in specie, or gold and silver coin. Before the enactment of those statutes all debts were payable in gold or silver, when they were not expressly agreed to be otherwise. And where the contract expressly rendered them payable in gold or silver, it duly expressed what the law without that as explicitly implied. They have accordingly been regarded and construed as being in substance the same, whether that intent was expressed or merely left to be implied by law. Congress has intervened by means of these statutes, and for the purpose of promoting the paramount interests of the country, so far defeated that intention as to allow all private debts to be paid with Treasury notes. The obligation to receive them is no higher in one case than it is in another. It applies to all in the same manner. Accordingly the Supreme Court of Iowa held that a note, dated in October, 1860, for $700, payable in United States gold, could be lawfully and properly paid by the payment of that amount of Treasury notes. (Warnibold *vs.* Schlicting, 16 Iowa R., 244.) And the District Court of the county and city of Philadelphia, that a bond for twenty-eight thousand dollars, "in specie, current gold and silver money of the United States," could be discharged by Treasury notes in the same manner. (Shoemberger *vs.* Watts, vol. 10, Am. Law Reg., 553.)

48 49 50

The same ruling was made by the Supreme Court of Massachusetts, upon a note dated in December 1861, for $500 payable in specie, Wood *vs.* Bullens, 6 Allen, 516; and by the Supreme Court of Michigan, in an action upon a bond, $500 of which was payable in gold, (Buchegger *vs.* Schultz, vol. 14, Am. Law Register 95); and by Justice Agnew, of the Supreme Court of Pennsylvania, where the action was on a lease by which the rent was made payable in lawful silver money of the United States of America, (Schollenberger *vs.* Drinton, 12 Am. Law Reg., 591.) In a case more recently decided by the Superior Court of New York, (Wilson *vs.* Morgan, 30 How. P. R., 386,) the same principle was made to govern the payment of freight arising under a charter party made in Calcutta, by the terms of

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52 which it was payable "in silver or gold dollars, or by approved bills on London," if the cargo was unladen and delivered in the United States.

Other cases were cited upon the argument of this cause by the defendant's counsel, which it was insisted should exercise a controlling influence in the disposition of it. Some of those cases, it will be seen upon an examination of them, are entitled to no weight whatever in that respect.

That of the Nova Scotia Telegraph Company *vs.* American Telegraph Company, 13 Am. Law Reg., 365, is a case
53 where the lease whose construction was involved was made, and the rent reserved by it was payable, and the action for its collection prosecuted in Nova Scotia. It did not come within the terms of the acts of Congress, because they only declare Treasury notes a legal tender "within the United States." As to what should be a legal tender in that case it depended entirely on the laws of that Province after a failure to pay in the manner the lease provided for.

The case of Carpenter *vs.* Allerton, 13 Am. Law Reg., 225, arose under the statute peculiar to the State of Cali-
54 fornia which provided that judgments in the Courts of that State should be pronounced in the coin or currency in which the contract involved was expressly made payable. And upon a sale of property to satisfy them, the bid of the purchaser was to be made in the same coin or currency. The validity of this statute was involved in that case in view of the legal tender laws of the United States. And the Court pronounced it constitutional. Whether that judgment was correct or not it is not necessary to inquire at this time, though there are very weighty reasons for sustaining
55 a different conclusion than that which the case maintains, as will be seen from the decision of the Court of Appeals in this State, in Kneetle *vs.* Newcomb, 22 N. Y., 249. A great principle of public policy exists in favor of maintaining the laws of Congress on this subject, which should not be permitted to be invaded either by the contracts of parties or the legislation of States. Otherwise statutes enacted by the General Government for the promotion of the public good will be effectually nullified and overthrown

by the Legislatures of such States as may entertain different 56
opinions concerning the best manner in which it can be
subserved.

The decision of the Special Term, in the case of Luling *vs.* The Atlantic Insurance Company, (30 Howard's P. R., 70,) was made upon the course of business which the Company had instituted between itself and those insured by it. Such as paid premiums in gold, were entitled to their dividends and the adjustment of their losses on that basis. And it was to enforce that regulation of its business that the action was brought. The question in this case was not 57
considered.

That of Chouncer *vs.* The Steam Tug *Griffin*,(vol. 14 Am. Law Reg., 45,) was brought to recover the value of a scow lost in Canadian waters by means of the carelessness of those navigating the tug which had her in tow. The demand to be adjudged was not a debt, but the value of a specific article of property in the currency that could be lawfully used to satisfy the decree. The difficulty in the case arose out of the circumstance that the witnesses in their evidence concerning the value of it, mentioned Cana- 58
dian, instead of American value. If the loss had occured in American waters the witnesses called to prove the value, would have done so by referring it directly to the Treasury note standard. For the business of the country, as well as the proceedings of Courts had been necessarily and insensibly accommodated to that standard of value.

The other case referred to, that of the seaman's action for wages against the ship *Rochambeau*, decided by Judge Ware, in the United States District Court, in Maine, if correctly referred to, is in direct conflict with the acts of 59
Congress declaring Treasury notes a legal tender. For although the contract of shipment was made in a foreign country, the libellant was endeavoring to enforce payment of the debt created under it, in a Court of the United States, where the statutes constitute the supreme law of the land. No report of the cases of Thompson *vs.* Riggs, Philadelphia R. R. Co. *vs.* Moulson, or of the case in the Court of Chancery of the State of Kentucky, have fallen within my reach,

60 and on that account they have not been examined or otherwise referred to But even if the information concerning them should prove entirely accurate upon which the argument of the defendant's counsel was placed, they could not have the effect of overcoming the accumulation of authority by which a different conclusion has been reached. The judgment of the Special Term should be reversed, and judgment directed for the plaintiff, adjudging the mortgage paid, and that it be satisfied of record.

As the case of Rodes *vs.* Bronson, executor, &c., is en-
61 tirely dependent upon the same point, a like disposition should be made of that.

Judge Grover dissented from the decision.

Dissenting Opinion

OF JUDGE GROVER, AT A GENERAL TERM OF THE SUPREME COURT HELD AT THE CITY OF BUFFALO, IN THE COUNTY OF ERIE, IN MAY, 1866.

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GROVER, J.: The importance of the principal involved in the present case calls for a brief statement of the reasons which have led my mind to a different result from that arrived at by my associates. In the first place, it is proper to consider the first position assumed by the counsel for the appellant. That position is, that by the plaintiff's neglect to appoint a place in the city of New York at which payment should be made, the officers of the City Bank in said city became, by the provisions of the con-
63 tract, the agents of the plaintiff to receive payment thereon, and credit the same to the plaintiff upon the books of the bank, and that, therefore, anything received and credited by the bank officers as cash, operated as payment upon the mortgage, the same as though received by the plaintiff. The only authority that it is pretended the officers had was conferred by the contract and default of the plaintiff in appointing another place of payment. The contract, in that event, provides that such payment, that

is, the payment called for by the contract, may be made to 64
the City Bank of New York, and credited to the plaintiff. It will be seen that no authority is conferred upon the bank officers to modify the contract in any respect, but only to receive the payment specified in the contract, and credit the same to the plaintiff. In this way only could they effect a satisfaction of the contract, and a discharge of the plaintiff's lien. Had the bank officers received bonds of any of the States, or of the United States, and credited the same in kind to the plaintiff, it would hardly have been contended that it would have operated as payment of 65
plaintiff's mortgage; yet the principle of the counsel's position is, I think, the same. If the plaintiff, by the contract, could only be paid in gold and silver coin, lawful money of the United States, he was entitled to have a credit for such coin by the bank, so that he could compel the bank to pay such coin to him. I think if the plaintiff (upon the assumption that defendant could only be paid in coin) had procured the City Bank to credit the plaintiff with coin so as to render itself liable to the plaintiff therefor, he would have discharged the obligation to the plain- 66
tiff irrespective of the consideration received by the bank for such credit. The defendant procured no such credit by the bank to the plaintiff. This brings us to the important question in the case, which is, "Can the defendant compel the plaintiff to accept payment upon the contract in the present case in United States lawful tender notes?" If he can, the judgment appealed from is erroneous, and should be reversed. If not it should be affirmed, with costs. The first proposition to be determined, obviously, is whether the various acts of Congress declaring Treasury 67
notes a legal tender in payment of all private debts are constitutional and valid; and whether, if such acts are constitutional and valid, they are applicable to contracts made previous to their passage by Congress. These questions have been decided against the defendant by the Court of Appeals in Myer against Roosevelt (27th N. Y., 400.) It is clear that it is the duty of this Court, in its judicial action to regard the doctrine held in that case as the law of

68 the land, until reversed by that Court or by the Supreme Court of the United States, although as individuals we might regard the decision as based upon entirely mistaken views of the legislative powers conferred by the Constitution upon Congress. The doctrine must at present be regarded as settled, that all private debts, no matter when contracted, if payable in money, without any specification as to kind, may at the option of the debtor, be paid in lawful tender—Government notes—pursuant to the act of Congress. The Court of Appeals have in the case decided
69 gone to this extent, but not beyond. An examination of the various acts of Congress upon the subject of the currency will show that at present we have several kinds of money, all of which are lawful tender in the payment of debts generally. This money consists of the gold coinage of the country of various dates, differing slightly in value of similar silver coinage, varying somewhat in value, and of United States Treasury Notes, made by act of Congress lawful tender in payment of private debts. It is scarcely necessary to remark that the difference in value
70 between the various coinages of gold and silver is wholly attributable to the different quantities of those metals contained in pieces of the same denomination, as it is self-evident that gold and silver cannot fluctuate in value when compared with the same metal.

The fact in this difference in value between coinages of different date, containing different quantities of the precious metals proves, (if any proof was wanting), that the value is intrinsic, and but slightly affected by the stamp of the Government, and the fiat of the Government making it
71 a lawful tender in payment of private or public debts. It is equally evident that the value of the lawful tender Government notes is substantially independent of the act of the Government declaring them a lawful tender in payment of debts private, and of some public debts. That value depends to a very limited extent indeed, upon the lawful tender quality, but upon the intrinsic value of the notes. That value is the credit of the Government that has undertaken to redeem them. It was an ingenious con-

trivance making them lawful tender. The effect was, as 72
might readily have been, and by the contrivers was fore-
seen, to make the Government credit the standard of all
other values, and thus preserve that credit at apparent par
through all the vicissitudes of a long and exhausting war.
This was the advantage derived therefrom. It was wholly
unnecessary to advert to the evils, if any, as such have no
bearing upon the question under consideration. Making
this Government credit the standard, created great appar-
ent fluctuations in values of everything else. Thus gold
and silver coin at times, when Government credit was high, 73
was at a slight premium as it was called, and in dark hours
when such credit was greatly depressed, it was at a prem-
ium of one hundred and eighty, that is, two hundred and
eighty of paper was but the equivalent of one hundred of
gold. The fluctuation in other commodities was great, but
perhaps not equally so, as other elements, to some extent,
always affect the price of the latter more or less. This ap-
parent premium upon gold and silver was in reality nothing
but the depreciation of the government paper. The ques-
tion in the present case is, whether parties may in their 74
contracts protect themselves from this depreciation. In
other words, whether a man in selling real estate upon a
long credit, can, under existing law, protect himself from
this depreciation without renouncing all benefit of the
coinage to determine the quantity and fineness of the metal
he is to receive in payment. If he can, it must be done, as
in the present case, by providing in the contract for pay-
ment of a given sum in gold or silver coin. Why may not
parties so contract? Is there anything unlawful or against
public policy in such contracts? The law provides all the 75
kinds of currency. It makes all a lawful tender in the
payment of debts. It follows, it is equally as lawful to deal
in one kind of currency as another. Congress has not
made dealing in gold or silver coin as a medium of payment
unlawful. Hence the advocates of the omnipotency of
Congress over the question of currency and lawful tender
need not be alarmed at this doctrine. Parties having the
legal right in their dealing to protect themselves against

76 the fluctuations of one kind of currency by providing that payment shall be made in one more stable, the next inquiry is, whether these parties did so provide in their contract? The language in the contract is, for the payment of one thousand eight hundred dollars in gold or silver coin, lawful money of the United States. This language requires no construction, it can be made no plainer. The counsel for the appellant insists that this cannot be so, for the reason that at the date of the contract no one could have anticipated the making of Government notes or any-
77 thing but gold and silver coins lawful tender, and that it was therefore a meaningless provision in the contract. The answer to this is, that every one is presumed to know the law of the land in which he resides and transacts business. The Constitution of the United States is the supreme law, and these parties must be presumed to have known as well as the present Chief Justice of the United States, that Congress possessed plenary power to make anything lawful tender which in their opinion might promote the welfare of the country, and that they might lawfully in the exer-
78 cise of such power, make some lawful tender, which, before the expiration of the credit, would be worth but forty cents on the dollar in gold and silver coin, and that the clause was inserted to protect the plaintiff against such risks. The remaining question is, "whether the contract being lawful, the Courts of either law or equity can enforce it so as to effectuate justice between the parties." This question must be answered in the affirmative, or it is a reproach upon the law. I know the mind is at first startled by the novelty of the various questions that present
79 themselves. It at once inquires, can a paper dollar, which the law declares shall be a lawful tender for one dollar, be legally regarded as worth less? Can a gold dollar which the same law declares a lawful tender for a dollar, be legally regarded as worth more? Can the law recognise a difference in the value of dollars? These are questions not settled by judicial decision. I say not settled, for the reason that although there have been, since 1862, some decisions of Courts upon each side, yet there is nothing

that prevents the questions being considered entirely original, and to be settled upon principle. In considering these questions it is necessary to consider what constitutes value. Does this consist solely of utility, in paying debts? Is its measure to be determined by the answer to the inquiry for how much is it, a lawful tender? If so, wheat has no value, or any of the real and personal property of the country, except the currency made legal tender by law. What is the measure of value? It is, and must for all commercial and legal purposes, be the amounts of the least valuable lawful tender it will command. An examination of the acts will show that Congress has not attempted to determine any value as intrinsically inherent in currency. They have only provided for how much it shall constitute legal tender. We have already seen that all the kinds of currency have an intrinsic value wholly independent of their lawful tender qualities. There have been times when a gold dollar was worth two and eighty-hundreths paper dollars, although the gold dollar was lawful tender but for a dollar, and the paper equivalent for $\$2.\frac{80}{100}$. Of course this difference is entirely independent of the lawful tender qualities of either. This intrinsic value, Congress has not attempted to interfere with. I say this to show I am not trenching upon the principles of the strongest advocates of Congressional power. I concede in the fullest manner that under the decision of the Court of Appeals the paper is lawful tender, and that every dollar will cancel a debt of one dollar, and that the gold dollar, will, as tender, go no further than the paper; but for other purposes, but few are so ignorant at this day as not to know that their respective values are widely different, which Congress has in no respect attempted to interfere with. What difficulty is there in the way of the courts recognizing this difference in value for purposes other than lawful tender. Congress has created none, the State Legislature has interposed none, and, I am right sure, that no maxim of the common law, (the perfection of human reason) will be found in the way. What legerdemain compels courts to ignore in their judgments, facts as patent as the

84 meridian sun? I think it clear that courts not only may, but are bound in duty to recognize and act judicially upon the difference. They must do so or utterly fail in administering justice. Surely, had a man borrowed one hundred dollars in gold coin at the time the tender in the present case was made and agreed to repay it the next day in similar coin, and had taken forty dollars of the coin and purchased therewith one hundred dollars lawful tender notes and tendered the same to the lender, the law would not adjudge the borrower to have performed his contract and
85 dismiss him from court with costs, on the ground that the lender was making a false clamor against him. But how can a Court of law furnish an adequate remedy for the breach of a contract to pay in currency of a particular kind? That question is not directly in the present case, but if law can redress such an injury, much more can equity, where it has cognizance. It has heretofore been considered the glory of the common law, that its principles required the application of right reason to new cases as they arise. By so doing justice is surely attained between
86 litigants. By a failure so to do, and adhering to technical reasoning; that you cannot recognize and act upon truths known to everybody, right is defeated, the law becomes impotent, and it may truly be said, by modern probity, if any, justice has fallen in the streets, and equity cannot enter the Courts. The remedy in Courts of law for breaches of contract, is an award of damages equivalent to the loss occasioned by the breach. The process is the same when the breach consists in failing to deliver or pay coin, as it is in fixing damages in any other case. The lawful
87 tender of least intrinsic value is taken as the standard, and a sufficient amount of this awarded to the injured party to make good the loss sustained by the breach. This is done in all cases of awarding damages for breach of contract. If the action is for breach of any contract to deliver property, the damages are uniformly assessed in the lawful tender of least intrinsic value. That this was the only course to administer justice was so obvious that it was adopted universally without discussion, and, almost with-

out consciousness that such a rule was acted on, no one ever 88
heard, when the question was as to value of a horse when the gold dollar was worth two in paper that damages were assessed upon the gold basis, and yet the same complaint would be equally applicable to all such assessments as is now urged against applying the same rate to cases where the contract is to pay in coin. That complaint is that, by a diminution of the premium on gold, or what I regard as the same thing, an appreciation in the value of public credit, which of course increases the intrinsic value of paper after judgment, the creditor will receive too much. 89
To this it may be answered that it is equally probable that he will lose by an increase of the premium. The chance of gain or loss is inseparable from the use of lawful tender money of constantly fluctuating intrinsic value. The ignorant believe that it is gold and silver that fluctuate, and that paper is uniform in value; and I think, from their reasoning, that some judges are possessed with that idea. I regard the point too clear to require argument. The debtor can always protect himself from any such loss by prompt payment. It is a great mistake to suppose that 90
the lawful tender paper is in fact of equal value in the payment of debts with gold coin. A man owing $12,000, and having all his property in lawful tender paper amounting to $10,000, is insolvent. The same debtor having the same amount of gold coin can now, by exchanging coin for paper, pay every cent and have something left, and there have been times when his balance would have been more than the whole debt owing. It is a legal fiction, contrary to a universally known truth, that paper made lawful tender by Congress is of equal value with 91
gold coin in the payment of debts. There may have been debtors of that stern integrity who, having received the consideration upon a gold basis, have felt it their duty to pay the debt in something of equivalent value; but I feel sure that there never was one fool enough to act upon the belief, when gold was at a premium, that gold was of no more value than paper to pay debts, and for that reason to pay his debts in coin. The case is now presented of the

92 country having different kinds of lawful tender money, differing widely in their intrinsic value. My conclusion is that it is entirely lawful for parties to contract for payment in any specific kind of this currency, and that when they have so contracted the rules of law enable, and those of justice require, the court to enforce such contracts and afford adequate redress in case of breach, the same as any other lawful contracts; and they must do this or there is a failure of justice occasioned by the impotency of the common law, a reproach to which I think that system of
93 jurisprudence not subject. A point not in this case was somewhat discussed—that is, whether the time of the breach of the contract, or of the trial, was to be taken for the assessment of damages. I think right reason requires that of the trial to be adopted. I am aware that the time of breach is the time at which damages upon contracts generally are assessed. That, in such cases, works out justice. The object is effected by giving an adequate compensation for the injury. In most such cases the value of commodities change, and therefore value at the time of
94 breach is more likely in the great mass of cases to afford just redress; but when the question is between gold and silver coin and lawful tender paper, the value of the coin does not change; that of the paper does. The party injured is entitled to his coin and interest at the time of trial. This precisely compensates his injury, neither less or more. I have hitherto considered the present as a case at law; I have not, however, fallen into the mistaken idea that it is so in fact. It is a case where the plaintiff applies for the exercise of equity jurisdiction in his behalf. It is the set-
95 tled maxim that he is not entitled to this, unless equity and good conscience require it. What equity has a man who for an adequate consideration has agreed to pay gold or silver coin, and has tendered something of four-tenths of the value thereof, as performance? I can see none. I regard the conscience as anything but good that will permit its possessor to borrow gold coin and contract to repay in similar coin, and then attempt to discharge the obligation with the same normal amount of lawful tender notes,

worth less than half as much as the coin. Should the 96
Government attempt to pay in depreciated paper, debts agreed to be paid in coin, every right thinking man would pronounce its conduct infamous. And courts of justice pronounce similar conduct of individuals agreeable to equity and good conscience! I cannot so regard it. This is the most important commercial question considered in the courts of this State, except that of the constitutional power of Congress to make paper a lawful tender in the payment of debts. The effect of settling the law so that parties can by contract protect themselves from the fluc- 97
tuating intrinsic value of government paper can scarcely be appreciated. I regard it fortunate that the question is to be decided in a time of peace, when it can be calmly considered, uninfluenced by any fear that a decision either way may be disastrous to the Government. The judgment appealed from should be affirmed.

98 **Opinion of James C. Smith, J.,**

AT A TERM OF THE COURT OF APPEALS OF THE STATE OF NEW YORK, AT ALBANY.

PETER RODES,
Respondent,

vs.

99 FREDERIC BRONSON,
Executor, &c.,
Appellant.

SMITH. J. By the terms of the mortgage executed by the plaintiff's vendor, he agreed "to pay the sum of one thousand four hundred dollars in gold or silver coin, lawful money of the United States."

What did the parties to the mortgage intend by the
100 words "gold or silver coin, lawful money," &c.?

The counsel for the defendant claims in his printed argument submitted to the court, that the "promised coin is not *currency*, but is a *commodity*, and is so treated by the contracting parties;" and that "damages for the non-delivery of such commodity are to be measured, not by the number of coins promised, but by their *value* in Treasury notes, the currency in which the judgment will be canceled." This is asserted, in the argument referred to, to be the radical position on which the claim of the de-
101 fendant rests, and manifestly it is so. It is the essence of the entire argument submitted in his behalf.

Upon the assumption that the parties treated the promised coin as a commodity, and not as currency, the defendant encounters serious difficulties. In the first place, the parties did not specify the amount of the commodity to be delivered in payment of the debt expressed in the mortgage, nor the price at which it should be receivable, and

NOTE.—Reported 34 N. Y. R., p. 649.

consequently the obligation of the promisor was merely to 102
deliver so much of the stipulated commodity as, at its
market value, would cancel the debt. This will appear
to be the true construction of the contract, if we exclude
(as we should do upon the defendant's assumption) the
idea that the promised article possesses the attribute of
currency, and if we regard it as a commodity merely, like
bullion or uncoined pieces of gold and silver, having no
arbitrary or legal value affixed by the stamp of the Gov-
ernment. In this view the word "coin" used in the
agreement has no significance except as a designation of 103
the particular form of the commodity, and the words "lawful
money of the United States" are merely descriptive of a
particular species of the commodity, of which "gold or
silver coin" is the generic term. Thus considered, the
agreement is to pay a specified sum in a specified com-
modity; and the designation of the commodity as a me-
dium of payment is the only circumstance that distin-
guishes the agreement from an ordinary contract to pay an
expressed sum of money. The effect of the agreement is
precisely the same as if it had provided for the payment 104
of a specified sum in any ordinary chattel, as, for example,
in wheat, without fixing the price at which the chattel
should be received. In that case the promisor, if he chose
to pay in wheat, instead of money, could turn it out at
its market value at the stipulated time and place of pay-
ment. So here, the agreement is to pay fourteen hundred
dollars "in gold or silver coin," not in currency, it is as-
sumed, but in a specified *commodity*, to which the parties
have not fixed a value by their agreement, and which, not
being treated by them as currency, has no legal or deter- 105
minate value except that which it will command in mar-
ket. Regarding the stipulated article as a commodity
purely, and assuming for the present that the promisor
was under an absolute obligation to pay in that commod-
ity, the utmost extent of his obligation was to pay or
deliver so much of the specified article as was worth in
market, at the stipulated time and place of payment, a sum
equal to the amount of the debt secured by the mortgage.

106 But the defendant's counsel endeavors to obviate this difficulty by treating the promised article as a commodity for one purpose and as currency for another; as a commodity for the purpose of determining the mode or medium of payment, and as a currency for the purpose of fixing the amount or quantity of the commodity to be paid. He reasons thus: The plaintiff agreed to pay fourteen hundred dollars in a certain commodity; that commodity is gold coin of the United States, each piece of which is stamped as a dollar, and is known as such in
107 the currency of the country; therefore he was bound to pay fourteen hundred pieces of that description, or their equivalent. And as, at the time of his tender, each of those pieces was worth in market $\$2.\frac{25}{100}$ in Treasury notes, the conclusion is reached that he ought to have tendered in such notes a sum equivalent to fourteen hundred dollars, and the interest thereon, multiplied by two and one-fourth. The fallacy of this reasoning consists in treating the stipulated article as currency, having a legal value as such, while assuming to treat it not as currency,
108 but as a commodity merely, having no value except that which it bears in market.

In the next place, the defendant's position is inconsistent with the established rule of law, that a provision in a contract for the payment of an expressed sum, making such sum payable in a specific commodity is for the benefit of the promisor, and he may pay the sum in the commodity or in money, at his option, although the contract fixes a price at which the commodity shall be receivable. Thus, if the parties to the mortgage in question had gone
109 further than they actually went, and had fixed the value at which the specified commodity should be received, as, for instance, by providing that a piece of gold of a specified weight and fineness should be valued at a specified sum, the promisor would not have been obliged to pay more than the amount of the debt expressed in the mortgage, with interest.

The case of Phinney *vs.* Gleason (5 Wend., 393) was upon a note whereby the defendant promised "to pay $79 50

in salt at fourteen shillings per barrel." The late Court 110
for the Correction of Errors held that the measure of damages was the same specified in the note, and not the value of the salt. Chancellor Walworth, delivering the leading opinion, cites with approbation Pothier, to the effect that these agreements for paying anything else in lieu of what is due, are always presumed to be made in favor of the debtor, and therefore he has always a right to pay the thing which is actually due, and the creditor cannot demand anything else. 2 Ev. Poth., 347, No. 497. Chipman's Treatise on Contracts is also referred to, where 111
the case is put of a note for $100, payable in wheat at seventy-five cents a bushel, and the author concludes that it comes within the principle stated by Pothier, and says that if at the time fixed for payment, wheat be at fifty cents a bushel, the debtor may pay in wheat at the rate of seventy-five cents, and that if the parties had intended the risk in the rise and fall of the wheat should be equal with both, the contract would have been simply for the payment of a certain number of bushels. Chip. on Cont., 35. There are other authorities to the same effect, cited in the 112
present case by Judge Daniels in the court below. They proceed upon the ground that the expression of an amount of indebtedness raises the presumption that the promisor has received that amount or its value, and no more, and therefore he is not to be regarded as undertaking to pay more than that sum in any event. In the case at bar, it is unnecessary to resort to the presumption referred to as the fact is found by the Court that the mortgage was given to secure the repayment of the sum of fourteen hundred dollars borrowed of the mortgagee. 113

The obligation of the promisor would have been materially different if, without expressing any amount of indebtedness, or any certain sum to be paid by him, he had agreed to deliver or pay (it is immaterial which of these expressions had been used) on a day named, a specified quantity and quality of the stipulated commodity, as, for instance, a certain number of ounces of gold or of gold coin of a certain degree of fineness. In that case the

114 measure of damages, in the event of his non-performance, would have been the market value of the article agreed to be delivered at the time and place of delivery. In the present case the measure of damages is the *sum* which the mortgagor agreed to pay, with interest, without reference to the value of the commodity in which it was payable.

Thus far the case has been considered upon the defendant's assumption that the contracting parties treated the specified coin as a commodity, and not as currency; but, in truth, that assumption is groundless. The parties
115 stipulated that the sum expressed should be paid in the "lawful *money* of the United States," to wit: "gold and silver coin." In the state of things which existed when the mortgage was executed, the stipulation was of no practical effect whatever, for without it the promisor would have been obliged to pay in metallic coin, which was the only money then recognized by our laws as a tender in the payment of debts. It is true certain foreign gold and silver coins were then receivable in payment of debts under the Act of Congress of March 3, 1843, but
116 they were receivable at certain rates prescribed in the act which made them equal in value to the gold and silver coins of this country. At the time when the contract was made, the gold and silver coin of the United States was in common circulation as currency, it was the medium in which all other currency in circulation was redeemable, and it was not dealt in as a commodity unless in rare and exceptional cases. That state of things continued to exist until the mortgage became due in 1857, and for five years thereafter, during which its payment
117 was forborne. At all times from the execution of the mortgage till its maturity, the debt secured by it was liquidated, and was payable in the only lawful money of the country. When and by what process was it transformed into an unliquidated demand for the delivery of a commodity? Probably it never would have occurred to any one to suggest that such was its character, but for the legislation of Congress, in the Act of February 25, 1862. At any rate it may be safely asserted that even

the defendant did not so regard the agreement previously 118
to the passage of that act, unless in anticipation of legislation of that character, and with a view to avoid its effect if it should take place. So far as the contract was framed with that design, it is inoperative and ineffectual. The power of Congress to authorize the issuing of Treasury notes, and to declare them money and a legal tender in payment of debts contracted previously to the passage of the act by which such power is exercised, as well as those contracted subsequently, has been affirmed by this Court, 27 N. Y., 400. If the contract in question is to be ex- 119
cepted from the operation of the act of 1862, on the ground that it specifically provides for payment *in coin*, the constitutional power of Congress above referred to, as to pre-existing debts, may be completely annulled in the future by inserting a similar provision in all contracts for the payment of specified sums in money. The contract is to be read now precisely as it would have been read previously to the passage of that act, to wit, as a contract creating a debt, in a specified sum, payable in lawful money of the United States, and consequently payable in 120
legal tender notes, which are lawful money and have a legal value equal to that of coin in the cancellation of debts.

It is said that this view of the case is unjust to the creditor. But it is not so, unless the interests of creditors are more to be regarded than the rights of debtors, and are paramount to even the vital needs of the government. It is well understood that in the case of a contract for the future delivery of a commodity of a stipulated quantity and quality, each party takes the risk of a rise or fall in 121
its market value. So, in the case of a contract for the payment of a specified sum, in money, at a future day, each party takes a risk; the debtor, of an appreciation of the currency, the creditor, of its depreciation. It is immaterial whether the change in the value of the currency is caused by the operation of uncontrollable monetary laws, or by the direct exercise of the sovereign power of the government. In either case, it is within the risk. It

must not be forgotten that in the extreme peril which threatened the United States in 1861, it was utterly impossible to procure the thousands of millions of dollars needed, at the instant, as it were, to suppress the rebellion and preserve the federal government, without adopting some measure which would largely disturb all commercial value, by either raising or lowering the purchasing value of the currency, and thus bearing with severity upon either the creditor or the debtor class. The choice of measures, within the warrant of the Constitution, rested with the government itself. The parties to the mortgage in this case, are presumed to have contracted in full knowledge that Congress had power to authorize the issuing of paper money, and to declare it a lawful tender in payment of pre-existing debts, as they did by the act of 1862, and the parties are presumed also to have known that such power of Congress could not be restricted, hampered or evaded by a stipulation in the contract, making the debt payable in metallic money. If by that legislation the value of the creditor's claim has been reduced, the same effect might have been caused, and to the same extent, without the agency of paper money, by simply debasing the gold and silver coin of the country to a sufficient degree, a measure unquestionably within the power of Congress. A tender in such debased coin would have been a literal compliance with the contract, upon the defendant's own construction, but it would have been no better for him than was the tender which he refused.

The case of an agreement made since the act of 1862, for the payment of a specified sum *in coin*, in consideration of a loan in coin, or upon any other equivalent consideration, and in view of the difference in *market* value existing at the time between coin and Treasury notes having the same *legal* value, may differ materially from the present case. The validity of such an agreement, for some purposes at least, is distinctly recognized by the act itself, and, in many cases, contracts of that character may accord with, and even aid, the policy of the statute. But it would be worse than useless to make the consideration of the

present case an occasion for discussing one of the nature above suggested, and I have referred to the point, not for the purpose of expressing an opinion upon it, but to prevent misapprehension as to the scope of the decision. 126

The judgment should be affirmed.

Affirmed.

JOEL TIFFANY,
State Reporter.

127 **Dissenting Opinion**

OF WILLIAM H. LEONARD, J., AT A TERM OF THE COURT OF APPEALS OF THE STATE OF NEW YORK AT ALBANY.

PETER RODES,
Respondent,
vs.
128 FREDERIC BRONSON,
Executor, &c., Appellant.

This appeal is from a judgment of the Supreme Court, Eighth District, at General Term, reversing the judgment of the Special Term, and adjudging a mortgage due to the defendant as executor to be paid, and requiring the defendant to satisfy it of record. The object of this action was to compel the defendant to discharge a mortgage upon
129 premises in the County of Erie, owned by the plaintiff and to execute and deliver a satisfaction thereof.

The action was tried by the Court without a jury, upon an agreed state of facts, substantially as follows, viz.:— Christian Metz and wife executed to the defendant as executor of Arthur Bronson, deceased, a bond secured by a mortgage upon land in Erie County, bearing date, December 16th, 1851, for the payment of one thousand four hundred dollars, on the first day of January, 1857, "in gold or silver coin, lawful money of the United States,"
130 with interest semi-annually, on the first days of January and July in each year, in coin as aforesaid. Such payment of principal and interest to be made at such place in the City of New York as the said executor should appoint, and in default of such appointment, to be deposited to his credit, as executor, in the Merchants' Bank in the said city.

On the 25th day of March, 1853, Metz conveyed the 131
mortgaged premises to the plaintiff, Rodes, who assumed the payment of the mortgage, and paid the interest up to and including January first, 1864.

On the 10th day of January, 1865, the plaintiff tendered to the defendant one thousand five hundred and seven dollars in legal tender notes of the United States, which was the sum then due for principal and interest, and requested the defendant to accept these notes in payment, and to execute a satisfaction of the mortgage, which the defendant refused to do on the ground that it should be 132
paid in gold or silver coin. The defendant not having appointed a place of payment, the plaintiff on the same day deposited the said money in the Merchants' Bank of New York City, and gave the defendant notice thereof; and the money still remains in said bank to the credit of the defendant.

At the time of the tender the market value in the City of New York of legal tender notes, as compared with gold or silver coin, was as one to two and twenty-five hundredths. 133

The action was commenced in February and tried in August, 1865, when judgment was rendered at Special Term dismissing the complaint. The plaintiff appealed to the General Term, where that judgment was reversed, and a judgment entered adjudging the said mortgage to be paid and directing the defendant to execute to the plaintiff, upon presentation, a satisfaction piece; and to deliver him the said bond and mortgage and pay the costs.

The defendant now appeals from that judgment to this 134
Court.

HENRY R. SELDEN and JOHN J. TOWNSEND,
For the Appellant.

L. L. LEWIS,
For the Respondent.

135 LEONARD J.: It was conceded by the Conusel for the defendant that the constitutionality of the law, making Treasury notes a legal tender for the payment of private, as well as public debts, is not here in controversy. Whatever individual opinions have been formerly indulged they are surrendered for the present from a due respect to judicial authority expressed by the highest Court of the State, 27 N. Y. R., 400, Meyer *vs.* Roosevelt.

The sole remaining question is in respect to the application of that law to the present case.

136 The subject naturally invites to an extended discussion, and the material is before me, as well in the elaborate reasoning of learned and able counsel, as in the copious references to authority from essayists, history, and legal lore, for a comprehensive treatise upon the abstract sciences of currency and finance. While I have not neglected the opportunity for a careful examination, I shall confine my observations to a very brief limit. Such as appears to my mind to bear directly upon the legal question presented by the few facts of the case and the act of Congress
137 making Treasury notes lawful money and a legal tender in payment of public and private debts. I shall not expect to convince, where it may be expected that the gravity of the subject has already induced each member of this Court carefully to ponder the judgment which he is to pronounce, but shall endeavor only to perform the duty which has fallen to me by announcing my convictions according to the light of my own reason and conscience.

It is a fact, of which we are to take judicial cognizance,
138 that a Treasury note for one dollar or any other sum, is not an equivalent for an equal amount of gold or silver coin in the purchase of property. At the time the tender in this case was made, the sum tendered in notes would purchase less than one half of the merchandise or property that the same sum in coin would procure. The usual currency of the United States now consists of Treasury notes and bank paper, redeemable in such notes. That currency has become the customary standard of values in

commerce among our own people; but it is not the standard of commerce between the people of the United States and those of other countries; nor will our paper currency pass outside of our national boundaries, except by a computation which will cover the discount required for sending it home, and reducing it to coin by an exchange in a broker's office. Coin has ceased to be the currency of commerce in the United States, and can be obtained, ordinarily, in no other way than by purchase. In the traffic to procure it, the price or value is estimated by the fluctuating credit which obtains in the market for our paper currency. While the dollar in coin will now purchase very nearly the same amount of merchandise or property which it did before the Act of Congress, the paper dollar or Treasury note has never, since that date, been received by the seller as an equivalent for gold or silver coin, but he has always demanded an enhanced price when payment was to be made in the paper currency. It seems entirely self-evident from these facts, as well as by the admitted fact in the case of the relative value of coin and Treasury notes in the market when the tender was made, that such notes are not an equivalent for gold and silver coin in equal sums, and that coin has become a commodity, dealt in or exchanged for paper money or Treasury notes.

139 140 141

The stipulation of the bond and mortgage is that the sum named shall be paid "in gold or silver coin, lawful money of the United States." These latter words, "lawful money of the United States," are to be understood as descriptive of the coin, and not as convertible or equivalent only for another kind of lawful money. If these words are to be accepted in any other sense, as insisted by the plaintiff's counsel, it weakens the terms of the instrument The defendant, when preparing his security, and requiring payment in gold or silver coin, cannot be said, without stultifying him, to have intended that it might be discharged in any lawful money which was not the equivalent in purchasing capacity with the coin named.

142

The parties to the contract, undoubtedly, had reference

143 to the kind or description of gold or silver coin in which payment should be made.

There was in 1851, when this mortgage was executed, as at the present time, a coinage of gold and silver, lawful money of the United States. It would be contrary to all the ordinary rules of construction to assume a meaning for the words "lawful money," which carries with it the assumed intention of the parties to expunge the words "gold or silver coin" from the contract, and that payment might be made in lawful money of less value. This construction
144 gives the option, as to the medium of payment, to the obligor; that is, that the obligor, imposed the condition upon the obligee to accept payment in a cheaper currency than gold or silver coin of the United States. This would be contrary to our ordinary experience. The contract requires solution in an article which has now become a commodity withdrawn from circulation as a currency, bought and sold daily for lawful money Treasury notes throughout the United States. If this be not so, there is no contract payable in coin, which can be literally en-
145 forced. The man who borrows $100, in gold coin of his neighbor to-day, agreeing to return a like amount of coin to-morrow, may discharge the obligation by payment in legal tender notes of the same amount. The mind revolts from such dishonesty. A contract made to-day, payable in coin, can have no greater force, or different construction from that made in 1851. Contracts to buy or sell coin, contrary to the belief of Congress, which has endeavored in vain to enact stringent laws to prevent them, would be violated without incurring any damages, if the arguments
146 of the plaintiff's counsel be sound; for the Courts must then deny the most palpable truth, and insist and hold that there is no difference between lawful money in coin, and lawful money in Treasury notes. Such a farce is too great to be respectable in a court of justice.

It is urged, in answer to these views, that contracts payable in commodities, are solvable in damages by the amount of dollars named in the contract. This position is fortified by an abundance of authority, when the price at

which the commodity is to be taken, is named in the con- 147
tract. A promissory note for $100, payable in salt at four-
teen shillings per barrel, or in paper at three and a half
cents per pound; or in land at nine shillings per acre, is
discharged by the payment of one hundred dollars. Such
promissory notes contain an implied alternative as to the
medium of payment, not designed to protect the payee
against a depreciated currency, but to secure one hundred
dollars in money, or its equivalent, in some commodity at
an agreed rate, that will not require a resort to the courts
to ascertain the amount, and is for the benefit of the 148
obligor.

The present contract, it will be readily observed, differs essentially from the class of cases relied on. No price of the commodity is here fixed, and the manifest object is to guard against a depreciated currency. It is to be assimilated more readily to a different class of contracts payable in commodities.

A rent payable in a certain number of bushels of wheat, or in a certain number of fowls, can be discharged only by the delivery of the articles, or by payment of their market 149
value. In the latter case the object is not for the advantage of the obligor, but to secure a mode of payment that shall guard against the fluctuations of value adversely to the landlord.

These considerations satisfy me that the parties have stipulated for payment in a commodity; and although the contract is solvable in Treasury notes, it can be done only at the rate which coin commands in the market; in the case of a tender by the obligor, at the time the tender is made, or if payment is sought in the Courts, by the obligee, 150
at the time of the trial. The tender, in this case, was of an insufficient amount, and the complaint was properly dismissed at the trial.

There is, also, a further consideration worthy of attention: The plaintiff has demanded equitable relief by compelling the mortgagee to execute satisfaction of the mortgage. It is not the mortgagee seeking to compel the payment of his security in coin, when the rate at which it can

151 be obtained in currency appears ruinous to the debtor: nor is it the obligor named in the bond, but the purchaser of the premises upon which the security is chargeable, who is triumphantly seeking to discharge the lien "without mercy." We know not, but that the original parties to the contract are willing to permit the payment to wait until happier times shall restore the currency mentioned in the contract, to its former accustomed channels in commerce, when gold and silver coin will cease to be an article of traffic. It has never been the rule for a Court of Equity
152 to permit its power to be invoked for the purpose of enforcing forfeitures and penalties, or hard conditions.

At the time of the tender, made by the plaintiff, the defendant had taken no steps, so far as appears from the case, to enforce a collection of his demand.

While the mortgagee is willing to wait for his principal and interest, no protection from a Court of Equity appears to be required in behalf of the mortgagor, or the owner of the equity of redemption, to compel the mortgagee to accept payment in a currency, which is not a commercial
153 equivalent for that in which it was stipulated by the contract, that payment should be made. It would be more in harmony with equitable principles, even if the plaintiff were right in his construction of the law, which I deny, to leave him to his defence, whenever the mortgagee shall elect to take proceedings to enforce his security by foreclosure.

The judgment of the General Term should be reversed, and that of the Special Term affirmed, with costs.

154

JOEL TIFFANY,

State Reporter.

STATE OF NEW YORK

Court of Appeals.

PETER RODES,

Respondent.

against

FREDERICK BRONSON, EXECUTOR, &C., OF ARTHUR BRONSON, DECEASED,

Appellant.

ARGUMENT

OF

JOHN J. TOWNSEND,

Of Counsel for Appellant,

NEW YORK:
WM. C. BRYANT & CO., PRINTERS, 41 NASSAU ST., COR. LIBERTY.

1866.

Wm. C. Bryant & Co., Printers, 41 Nassau Street, cor. Liberty, N. Y.

Court of Appeals.

Peter Rodes,
Respondent,

agst.

Frederic Bronson, Executor, &c., of Arthur Bronson, deceased,
Appellant,

Outline of the Argument of John J. Townsend for the Appellant.

I.—The Court is referred to the points prepared by Mr. Henry R. Selden, who is absent.

II.—The true construction of the contract is, that it is an agreement for the repayment of the loan in the currency selected by the parties and designated as the medium of payment.

1. The language used is similar to that used by the government in its gold obligations. Also to the language of the enactments which regulated treasury payments and receipts prior to 1862.

2. The designation of a particular kind of currency is not unmeaning, because governments have frequently coined their credit, and our government has the power of doing so.

3. It is not in principle like a chattel note, by which the promisor, for his convenience, simply, is relieved from converting the specified commodity into money; the trouble of doing which is assumed by the promisee.

4. It is not in principle like a note for $100, payable in cloth, at fifty cents per yard; the effect of which contract is a stipulation that the promisor shall have the benefit of a falling market.

5. It is a loan on bond and mortgage. One of the methods of investment recommended by law to the appellant for the preservation of the capital of the estate entrusted to him.

6. The parties to the contract, for their mutual advantage, selected as the medium of payment the most perfect known standard of value.

7. They followed the common practice of men in making contracts of long duration, and employed the ordinary safeguards used heretofore when money of different relative values has been in circulation.

Faw *v.* Marsteller, 2 Cranch., 10.
Jackson *v.* Schultz, 18 J. R., 174.

III.—The Court will give effect to the contract according to its import, unless it work intolerable injustice to a party; or unless the well being of the State forbid; or unless the Court is powerless.

IV.—So far from working intolerable injustice to a party, it is equal and fair.

If there be any preponderance of advantage, it is with the party who incurs the obligation.

V.—Public policy does not forbid the enforcement of the contract. On the contrary, sound policy requires it.

To justify annulling a contract, it must,—1, contravene a clear intent of the government. 2, It must do so to the detriment of the public interest.

I. This contract does not contravene a clear intent of the government.

A. The act of 25 February, 1862, does not, in express terms, say that gold and notes shall be equivalent.

B. The language of the act, on the contrary, recognizes a difference of value.

C. It cannot be inferred from the general language used, that the government intended to make them equivalent.

(*a.*) From the nature of the subject.

Value is not utility, it is purchasing power.

Value existed prior to the invention of money. It is independent of price, and the idea of a general rise of values is absurd.

The value of things which cannot be indefinitely produced, depends on demand and supply.

The value of things which can be indefinitely produced, depends on cost of production; as to those things, demand and supply merely cause perturbations of value above or below the natural level.

Things which can be produced at the same cost exchange for one another. The values of coal, gold and wheat depend on the cost of production. The possession of gold has always been coveted. It is so slowly consumed that its value has always been stable.

Prior to the use of money there were great inconveniences. Gold had become, virtually a medium of exchange.

Governments stamped it almost gratuitously, and it became coin or money. Coined, it acquired no value over bullion. Coin and bullion are commodities. If governments had stamped iron, neither metal nor money would be more valuable, nor could be made so by the action of government. Unlike other things, money is always in universal demand. With wheat and all other commodities men buy money. The money in circulation represents the demand for goods. The goods in the market represent the demand for money. The money in circulation does not equal the amount of goods. The amount of money required to move a given amount of goods, depends upon the rapidity of circulation. (It also, in the progress of civilization, came to depend on the amount of credit used as a substitute for money but it is not important to keep in view the existence of credit as a substitute for money.)

If the amount of money in circulation be excessive, prices rise at home; prices abroad remaining the same, imports are stimulated, exports repressed, and the currency is depleted.

Governments, in time, coined their credit. Suppose the volume of currency is increased one half by the issue of convertible paper money; by the operation of the same general causes, one half the gold in circulation flows abroad. If an issue of convertible money is made to the extent of all the circulation required, all the gold flows abroad.

If an issue of inconvertible paper money is made within the extreme limit just stated, the same results follow precisely—imports are stimulated and exports repressed until the currency regains its required volume.

If the issues of inconvertible paper money be continued indefinitely, prices rise at home, *including the price of or and bullion*, which are convertible each into the other. Neither exports nor imports have stimulus or repression. There being no outlet for the surplus currency, the depreciation of paper money will continue so long as the supply of currency exceeds the quantity required for the purposes of traffic in the markets of the country.

These results follow if the credit of the Government at home be the best conceivable.

Therefore, from the nature of the subject, it appears government did not intend that gold and notes should be equivalent.

(*b.*) The acts of Congress also establish satisfactorily that it cannot be inferred from the language of the Act of Feb. 25, 1862, that the government intended to make them equivalent.

See Mr. Selden's Argument, p. 8.

(*c.*) The practice of the government establishes satisfactorily the same conclusion.

See Mr. Selden's Argument, pp. 9, 10.

(*d.*) The innate sense that it is right to be honest, urges every one to the same conclusion.

See Mr. Selden's Argument, pp. 12, 13, 14, 15.

C. It cannot be inferred from the use of the particular term "debt," that if an obligation to pay coin be a "debt," Congress intended to make paper and coin equivalent.

The idea of debt is older than money.

Things which can be produced at the same cost exchange for one another. The values of coal, gold and wheat depend on the cost of production. The possession of gold has always been coveted. It is so slowly consumed that its value has always been stable.

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C. It cannot be inferred from the use of the particular term "debt," that if an obligation to pay coin be a "debt," Congress intended to make paper and coin equivalent.

The idea of debt is older than money.

Paper money, by the operation of the act, may be tendered to satisfy a debt of $100 simply, and as well a debt of wheat, coal, or gold coin.

The idea of the value of paper money is not necessarily involved in the idea of its capability of being used as a tender or instrument of satisfaction.

If the debt be 100 measures of wheat or oil, or 100 dollars in gold, the amount must be definitely ascertained to be cancelled by a payment of legal tender notes.

See Mr. Selden's Argument, Point V., page 23, the last clause.

II. If the government intended to declare gold and notes equivalent, nevertheless, this contract is not detrimental to the public interest.

A. Because they are not in fact equivalent.

B. Because stipulating for payment in gold rather than notes, does not impair the efficiency of notes as a tender, nor will contracts in this form be universally made to the exclusion of currency contracts.

C. It does not impair the credit of the government. That rests on the intelligence, sense of justice, and resources of the people.

D. The people are not so ignorant as to believe that the discrimination affects the credit of the government. There exists no popular ignorance, which, by being alarmed at the recognition of the fact, might work a real injury to the credit of the government. If there were an error wide spread and dangerous, it is to the Courts we should look, not to perpetuate but dispel it.

VI.—The Court is not powerless to enforce this contract.

A Court of Admiralty enforced a similar contract.
Trecartin *v.* Ship Rochambeau, 16 Am. Law Reg., p. 564.
See Mr. Selden's Argument, p. 11 to 15, 24 to 27, 35.

If a sheriff should levy on gold coin, and attempt to convert to his own use the amount of the premium, the Court would find a power resident somewhere in its organization to enforce justice.

JOHN J. TOWNSEND,
Counsel for Appellant.

STATE OF NEW YORK.

Court of Appeals.

PETER RODES,
Respondent,
agst.
FREDERIC BRONSON, Executor &c., of ARTHUR BRONSON, Deceased,
Appellant.

Sept. 26th, 1866.

Mr. JOHN J. TOWNSEND, in behalf of the appellant, said:

I hope the Court will not think it an assumption on the part of the appellant, to enter upon an oral argument of this case, when the respondent is satisfied to submit written points; but the private interests involved are of no mean consequence, and the public interest in the question to be discussed is of such magnitude, that it will be my justification. I sincerely hope that the hour consumed in presenting the case will be found to have been usefully occupied. If of use in any degree, I shall be amply rewarded for the labor and anxiety of preparation.

This case comes to the Court on an appeal from the 8th Judicial district. It is a suit in equity, brought by the respondent to compel the cancelling of a mortgage. The only peculiarity about the mortgage lies in the fact that it selects and designates a certain species of currency as a medium of payment. It provides that the mortgage debt shall be paid in gold or silver coin, lawful money of the

United States of America. The finding of facts appears on the 10th page of the case, and the facts are very simple.

The mortgage was dated December 16th, 1851. The sum secured to be paid is fourteen hundred dollars "in gold or silver coin, lawful money of the United States of America." The plaintiff in this action having become the purchaser of the equity of redemption, assumed the payment of the mortgage debt. On the 10th of January, 1865, he tendered to the defendant the sum of fifteen hundred and seven dollars in United States legal tender notes. At the time the tender was made, their market value in the city of New York, as compared with gold or silver coin lawful money of the United States, was as $100 in gold to $225 in currency; that is, one dollar in gold was equal to $2 25 in legal tender notes. The tender was refused, and this action was brought to compel the cancelment or satisfaction of the mortgage. The action was tried at Special Term before His Honor Mr. Justice Grover. The counsel employed on that occasion was the Hon. Henry R. Selden, whose absence has been compelled by the necessity of seeking abroad physical restoration and the leisure denied to him at home. The Court will not fail to miss the magnetic influence of his presence. His convictions were very strong upon all the points which are stated in his printed argument, which has been submitted to you to-day, and which contains the mature results of his researches and of his reflection upon the questions involved in this case.

The Court, at Special Term, in substance and effect decided that legal tender notes, issued in pursuance of the act of Congress passed February 25th, 1862, were not intended by the act to be the legal equivalent of the kind of currency specified and selected by the terms of the mortgage, and therefore held that the mortgagor had not performed the contract in substance or in form, and adjudged that the complaint be dismissed. An appeal from that judgment was taken to the General Term, and upon argument at the General Term in Buffalo, on the 11th of May, 1866, that judgment was reversed. The decision of the General Term was to the effect, that the notes and gold were in fact equivalent, and was embodied in a judgment, directing the defendant to

cancel the mortgage, and declaring it to be paid and satisfied.

The decision of the Court was not unanimous, the leading opinion was given by Mr. Justice Daniels. A dissenting opinion was given by Mr. Justice Grover.

The Court will at once recognize the importance of the matter in issue. It is one which the public have ever since the difference between the two kinds of money first became palpable, been practically deciding for themselves. Daily, transactions have been entered into, in which the discrimination between hard money and paper currency has been made by individuals, and the decision of men actually engaged in the operations of trade has been prompt, uniform, and definite. In the Courts, there has been uncertainty and conflict of opinion. Some tribunals have not failed to perceive what is evident to the observation of men not trained in schools; others have declared without a dissenting voice, by formal judgments, that legal tender notes are the equivalent of gold and silver; while similar adjudications have in other cases been rendered by divided Courts. The cause of this difficulty, I think, will be found to lie in the fact, that the questions are novel in their character. The idea of two existing currencies is unfamiliar to this generation, and until 1862, had been practically unknown in the history of this government. Neither the Judges nor the bar have been in the habit of considering questions, which, perhaps, have seemed to them better fitted to attract and interest a mere student of political economy, than to engage the attention of men called upon to deal instantly and earnestly with matters to be met, considered, and determined. They have been led unconsciously to throw around the idea of money a mystery which does not belong to it. Courts have also been led into a peculiar train of thought, which has conducted them, as we suppose, to most false conclusions, to wit: that there is something in the public interest and in the policy which the government has established which compels judicial officers to overlook what would otherwise seem to be the apparent fact, that there is an essential difference between the coined credit of the government and

the hard money which has been coined by the government.

The radical error which I conceive runs through all the cases in which it has been decided that paper is the equivalent of gold, lies in this particular point: it is supposed that Congress intended to make the two equivalent. That for which I am contending here, the objective point in all I have to say, will be to satisfy you that Congress did not intend to make the two equivalent, and that, therefore, the Courts are not bound to be blind, and not to see what every other individual in the community not only sees but acts upon.

In order to arrive at the proper solution of this question and view it in its true bearings, we are to look at the condition of these parties, narrowly notice their action, and see how the questions practically affect them. In this instance the testator had a certain amount of wealth or capital, which, at the time of his death he had not consumed. Most assuredly he would have consumed all the wealth he had, if he had not relied upon the power and the policy of the government to protect his successors in the enjoyment of it. For that is the very consideration, viz., protection in the enjoyment of property, as an inducement to abstinence which creates the differ ence between rude and untutored nations, and those civilized communities where wealth or capital so rapidly accumulates. The testator died, and the defendant in this action, succeeded to the administration of his estate. The law imposed upon him certain duties in respect to the fund which was entrusted to his care representing wealth counted by dollars. It was his duty to deal with it in the safest manner. He could not expose it to the risks which attend active production ; but he was compelled to dispose of it in a particular way, and be content to receive from it those moderate returns and those moderate profits, which are consistent with the greatest safety and which are denominated "interest." He had this property represented by $1,400. He found Christian Metz, the mortgagor in this case. Christian Metz wanted to use that amount of capital

actively, and they concluded the transaction which has been submitted to you. They were perfectly fair. There was no disposition, in the year 1851, on the part of one to take an advantage of the other. The appellant had $1,400 in capital to loan, and Metz was to receive that amount as a loan, and he agreed, and they both intended that he should return an equivalent. What did they do? The most important object they had in view was to secure that result by giving stability to their contract. It was not a new object, or one which they of all men first perceived to be important. It has been the vital consideration which has actuated men always in the adjustment of their contracts. It was the vital consideration which induced men first to adopt gold as the common standard of value. In order to secure that coveted stability, these parties specified in their contract that the amount should be paid in gold or silver coin. What did they know? They were men who were fairly intelligent. They knew that from a time remote in social history gold and silver had been selected by the civilized world, by common consent as a standard of value by reason of its peculiar stability. They knew that our government had, for a series of years, and after mature deliberation and discussion, finally settled upon and adopted a hard money policy. They knew, furthermore, that in the progress of civilization, governments had early seen the great use and advantage which could be derived by the people from the coining of the government credit, and the establishment of a paper circulation. They also knew that, without any designation of currency, the contract, when it matured, would be payable in the kind of currency in circulation at the time of its maturity. They also knew that our government, although it had emphatically stated its preference for hard money, might by stress of conceivable circumstance, be led to depart from that long established policy. They also knew (for every one is presumed to know the laws of the community in which he lives) that by the constitution of our government, it has the power to exercise the right of coining its credit whenever the public

exigency seems to require it. They therefore proceeded to secure the single element of stability, and to that end they selected hard money as the currency which should be paid and received in satisfaction of the contract.

I shall have occasion to remark hereafter, that the cases which have been decided, in which the question here discussed has been involved, have gone upon some sort of assumption that such a contract was hard upon the debtor. Was ever a suggestion more unfounded in reason? Is there a careful business man to day, who would not prefer, in making a contract for the payment of $10,875, which has ten years to run, to stipulate for the payment of $7,500, in gold or silver coin, lawful money, than for the payment of $10.875, without such designation. It is further observed, that while stability, in the abstract, was of great importance to both these parties, it was of equal, if not greater relative importance to Metz than the appellant. Because, if the obligation were payable in an uncertain medium, and such medium should depreciate one half, in reference to other things, the appellant would lose half the capital loaned and have something left. If the same medium should, as is equally probable, appreciate one half, in reference to other things, the borrower would notonly lose all he could hope to gain by the use of the borrowed capital, but, unless he had other wealth or capital, he would be ruined.

I have traced down the action of these parties to the execution of the contract. Let us see what was its practical operation. Christian Metz had a farm, which he pledged to the lender as security for the payment of the money. The very state of things which the parties had foreseen, came to pass. In February, 1862, the government was led to depart from its long established policy. It coined its credit in the shape of treasury notes, and owing to the redundant amount of that issue, far more than to any circumstance affecting the credit of the government, or any question as to the ability of the government to pay its debts, by the operation of causes which are far beyond the power of congress or the courts to control, the paper currency became depreciated in reference to gold. What

was the condition of the parties when that state of depreciation had advanced so far, as to be noticeable and important? The lender had done nothing but his duty, as the trustee of the funds entrusted to him, and his duty to society, by lending to another, for the purposes of active production, capital which the law did not permit him to use actively. And Christian Metz,—had he suffered? His farm was situated in a certain locality. Its value depended, not upon any act of congress, or the value of the currency of the country. His farm was worth just as much in exchange, as if the legal tender act had not been passed. I suppose there is no disposition on the part of anybody to dispute that proposition. His farm was as valuable as before. It was entirely unaffected by the condition of the currency. It might not sell for so much at a particular time, but that would be because there was not a demand for farms in that locality. Whatever it was worth, he could get for it, whether it was paper or gold.

I assume for the purposes of this argument, that the only transfer of the farm was directly from Metz to the respondent. In March, 1863, Metz determined to sell his farm—to exchange it for something else. He would not sell it unless he could obtain its full value in exchange. He would be governed by the ordinary motives by which men are actuated in dealing with their property. He bargained with Mr. Rodes in order to sell it to him, and effected an agreement for an exchange, at a valuation. It does not make any difference, for the purposes of this argument, how that valuation was arrived at or in what it was estimated—whether in corn, cloth, gold or silver, or paper money. Metz was to receive its full value. When he received its value from Rodes, it would be then his duty to pay to the appellant an exact equivalent to that, which in 1851, the appellant had confided to him. At this point of time, there would be no injustice or hardship between him and the appellant. He would pay the appellant the amount of his loan and keep the balance himself. Thus, it is perfectly evident that Metz could not suffer any loss by reason of his dealings with the appellant. Whether he sold his farm for more or less than it was

worth, or more or less than it cost him, are questions absolutely foreign to this controversy. But Metz did not, when he sold the farm to Rodes, receive in immediate payment its full valuation. They fixed upon the valuation, and fixed it, let us suppose, in paper money. Rodes had sufficient wealth or capital to enable him to purchase. Suppose it was wheat, which he was prepared to convert into paper money almost immediately; or suppose it was paper money which he had received the day before in exchange for wheat. But, although Rodes had sufficient wealth or capital to enable him to purchase, he either did not have enough to enable him to pay for the farm immediately, or if he did, he chose to employ his capital in some other way equally productive. He bought the farm partly on credit. He assumed to pay the appellant's mortgage, and the residue of the price to Metz, in money or its equivalent. How do the parties now stand affected? The appellant has done nothing; Metz, the original borrower, stands unaffected. For his protection, he has only to see that the agreement which he has just made with Rodes is properly carried into execution, and the ultimate payment of the appellant's mortgage by Rodes made secure. How did Rodes and Metz put their agreement into execution? How much of the purchase money did Rodes pay over to Metz, and how much did he retain, in order to pay the appellant's mortgage? The case does not show.

There has been no loss or inequality whatever to any one if, in closing the transaction, Rodes retained an amount sufficient to satisfy the plaintiff's mortgage, which could be readily ascertained on the day, by computing the value in notes, of $1,400 in gold.

If Rodes only paid to Metz, the balance over and above the sum thus ascertained, there would be no loss on either side.

In the absence of evidence, I assume that Mr. Rodes retained $1,400 in paper money, and paid the balance to Metz. If he did that, there is the precise point where the inequality of the transaction is presented. Rodes at that time made a mistake, if he only retained $1,400 in paper money, and paid Metz the balance, because he did not

retain enough to satisfy the mortgage. No matter what the premium on gold was, at that particular point of time, his loss was then fixed, and certain and unalterable. If, before he chose to make a tender, paper money had appreciated to the standard of gold, it would not relieve Mr. Rodes from the loss he had then incurred, because he had paid Metz too much, by then existing difference between $1,400 in gold, and $1,400 in paper. I repeat, the exact position of the parties in reference to the burthen of loss is thus; the appellant, the mortgagee has done nothing; he has not interfered in the succeeding transactions; Metz has sold his farm to Rodes, Rodes has assumed to pay the amount due on the mortgage, and if he retained only $1,400 in paper money, wherewith to pay it, and has paid to Metz the difference, there is his mistake. He has paid Metz too much. Having made the mistake, as I suppose, he seeks to throw the burden of it on the appellant, who has done nothing. The object of my dwelling upon the relations of the parties with so much particularity, is to show that the operation of the whole might have been and should have been (if the parties had been properly informed as to their rights,) perfectly equal as between the original lender, and Metz the original borrower, and Rodes the subsequent purchaser, who intervened.

If they had understood the principles of law which we suppose are applicable to the case, they would have executed their agreement intelligently, so that there would be no hardship or pressure upon any one of the three.

But suppose for a moment that the only parties interested were the appellant and the original borrower. If Metz consumed the borrowed capital in unproductive expenditure although it were thus lost to the world, he had all the enjoyment or other utility it was capable of affording, and if he has to return an equal value he cannot complain. If Metz hoarded it, he has it yet. If Metz employed it productively, the value of the produce is the same to him whatever be the currency of the country. If disinclined to active employment of the borrowed capital, Metz should have returned it to the appellant on 1st January, 1857,

when the mortgage matured, or if disposed to loan it to others, Metz should have taken the same precaution to guard against loss which the appellant did.

At this point I would invite attention to a few considerations directly suggested by the judgment, that the mortgage should be satisfied by the payment of legal tender notes. There are several phenomena, which at the outset, will arrest the attention of every thinking man. The first is, that the operation of the judgment is to deprive the mortgagee of a part of his capital. It works injustice to him, because it takes his capital away from him, and it transfers it to another. The next consideration is, that the language selected by the parties in drawing their obligation is the same precisely in grammatical construction and legal import, as that which the government has used in those enactments which preceded the legal tender law, and in which it published and confirmed its devotion to a hard money policy. It is also the same in grammatical construction and legal import as the language which the government has adopted, since the passage of the legal tender act, in creating those obligations which are payable in gold. The third consideration which I have to notice is, that the law as exponnded by the Court below, runs directly counter to the uniform practice of the government, which it has adopted in its financial operations. It also fails to recognize the discrimination between the two kinds of currency, which is made in the transactions by which men carry on the business of the country. I hold in my hand an extract, which I cut from a newspaper of the day in which the first mortgage bonds of the Central Pacific Railway Company of California are advertised in the market, amounting in the aggregate to $7,336,000. What are the words used? "Interest at seven per cent. per annum, payable semi-annually. Principal and interest payable in United States gold coin in the city of New York." Merchants daily sell their goods for gold, for which checks are given, made payable in gold, and the practice is recognized and universal. It is not very long ago that the repugnance of moral sentiment to the judicial exposi-

tion of the law applicable to a similar contract, was most strikingly illustrated by what occurred after a decision of one of the Courts in the city of New York. I refer to the case of Wilson *v.* Morgan, which is also mentioned by Mr. Justice Daniels in his opinion below. In that case the controversy was in respect to a charter-party, by the terms of which the freight was payable in gold. The decision of the Court was in accordance with the decision of the General Term in this case, and the defendants were adjudged to be allowed to satisfy the amount due on the contract in legal tender notes. After the decision was promulgated, the following card appeared in the New York *Times* of 21th March, 1866, signed by the firm in whose favor the decision had been rendered:

A Card from E. D. Morgan & Co.

"In the report of the case in several of the papers, it would seem that we are presented as intending to avail ourselves of the 'legal tender law' to avoid the payment in gold, of a contract payable in gold.

"Whatever may have been the technicalities presented on the trial, it was never our intention to avail ourselves of any defence to an obligation fairly made, to discharge it otherwise than according to its letter, payable in gold, meaning to be paid in gold coin of its full value according to its face.

"Of course the controversy was on the fairness of the contract as made, if that shall appear to be established, we shall assume its full value in gold dollars, without reference to any legal discussion upon any other point.

"E. D. Morgan & Co."

Observe, too, the State of California, loyal and prosperous, where the universal habit of the people has been to compute all values in gold or the dearer currency.

What I have to say in reference to the considerations named, is simply that it is passing strange that the judgment of the Court below should be right, and that these facts should exist. They point directly to the existence of

a law opposed to that judgment, which must prevail against and overthrow it.

The first question in the logical order which presents itself is, what was the contract between these parties? I should not think it necessary to say a word upon that point, if it had not been that his Honor Mr. Justice Daniels, in delivering the opinion of the Supreme Court, has at some length discussed it. The true construction of the contract we contend to be, that it is a contract designating hard money as the medium of payment; selecting and indicating a preference for one of two existing kinds of currency. The language used is that used by the Government in its enactments. The designation of a particular kind of currency is not unmeaning, because governments have frequently coined their credit, and our government has the power to do so. This fact furnishes an answer to those who urge that the contract means nothing more than if the words, "gold and silver coin," had been omitted. Again, it is said that it lies not within the power of individuals, by a few strokes of the pen, to alter the whole force and operation of the law making notes a legal tender; but the selection of one kind of currency has no such effect as is supposed. The notes will always be a tender to satisfy a gold obligation, when the value of it in notes shall be ascertained.

The next suggestion which has been made is, that this stipulation should not be read as a stipulation for payment in gold coin; that it is nothing more nor less than a chattel note. Mr. Justice Daniels has used this argument in his opinion. At first there seems to be plausibility in the idea. Is this an obligation to pay gold or silver coin, or is it a chattel note? We need reflect but for a moment, in order to detect the fallacy presented. Is it like a note to be paid in lumber? The first resemblance is in the grammatical construction. It is like a chattel note in that respect, and in no other. What is a chattel note? It is an obligation which is almost unknown in communities where large amounts of money are in circulation. Why is it unknown? Because the making of a chattel note serves no useful purpose, where there is an abundance of money in

circulation. It is not an agreement for the sale of lumber which I have made, when I give my obligation to a neighbor for a thousand dollars payable in lumber. If I do not choose to deliver the lumber he cannot compel its delivery, the measure of my obligation is simply $1,000. A chattel note is made in a country or neighborhood where there is little money. In the familiar language of the people of Vermont, it is said at maturity to "run into money." (Perry *v.* Smith, 22 Ver. R., 301.) It is made for the convenience of the promisor, to save him the trouble of converting his lumber into so many dollars, or of finding a purchaser for it, and the promisee takes upon himself that duty. That is all the office of a chattel note. That is its distinct and peculiar object. The difference, therefore, between the principle of a note payable in gold and silver coin, and a chattel note, is obvious. When parties agree upon a chattel note they have not in their mind a purpose to give stability to their contract. If the promisor finds it inconvenient to deliver lumber, he pays $1,000 in any lawful currency, but when an obligation is made payable in hard money, it is because the parties have been particular to designate the best known standard as the medium of payment, with the definite object and purpose to give stability to their contract.

Judge WRIGHT: As this is a contract payable "in gold or silver coin, lawful money of the United States," is not that merely descriptive that the debt shall be paid in lawful money?

Mr. TOWNSEND: The question presents one of the points which I propose to discuss, and I hope to be able to show the difference between gold and silver coin and the other kind of money, not gold or silver, which is co existent with it.

Judge WRIGHT: The contract is to pay the sum in 1857. At that date gold and silver coin were lawful money of the United States.

Mr. TOWNSEND: Gold and silver coin were lawful money

in 1857. So they were in 1866; but in 1866 there were two kinds of lawful money. In 1851 the parties contemplated that in 1857 there might be several kinds of lawful money —their anticipation was not realized until 1862. Then beside gold and silver, there appeared another co-existing kind of lawful money, and the two kinds of lawful money I purpose to argue were not equivalent; that the parties had selected one as the medium of payment, and had a right to so select it; that in doing so, they did nothing in opposition to any public interest, and having selected it, the parties are bound to the performance of their contract in the designated medium. It may be further noticed that although this contract was made in 1851, it must receive precisely the same construction as if made in 1866, unless some peculiar discrimination is to be made between contracts made before February 25, 1862, and those made since, or between contracts made before the public mind was actively awakened to the necessity of introducing paper money as a legal tender, and contracts made since. Surely it cannot be doubted that the motive in selecting the phraseology was the same in 1851 as it would have been if the contract had been drawn in 1866.

Pursuing the topic immediately under discussion, the chattel note is not a promise to pay money at all events, but it is a contract which relieves the promisor of the trouble of paying money. I do not dispute that a chattel note for $1,000, payable in lumber, may be paid in legal tender notes, but I do say that a mortgage, payable in gold or silver coin, is not payable in paper money; that gold and silver coin and paper currency are two different things—unequal—and that the parties had a right to discriminate between them.

There is another kind of chattel note which, it is said, this contract is like, viz.: a chattel note for $1,000, payable in salt, at fourteen shillings a barrel. Such a note is referred to in the prevailing opinion below, and it is necessary to shew where this mortgage differs from such a note. Contracts in that peculiar form were discussed in the case of Brooks *v.* Hubbard, 3 Conn. 58, and in the Court for the Cor-

rection of Errors in the case of Plunney *v.* Gleason, 5 Wend. 394. The Court seems at first to have hesitated what to make of such a contract, at a loss to decide whether it was a contract for the sale of a certain amount of salt, or for the payment of a certain amount of money. (See Meason *v.* Philip, Addison's Rep., 346.) In New York and Connecticut they were finally held to be chattel notes; the Court in New York referring to the fact that that species of contracts was in familiar use by the people inhabitants of the salt districts; the Court in Connecticut observing that the contract in question was one of the most common forms of engagements between manufacturers and their working men, and that from their frequency, their meaning was perfectly intelligible. The effect of contracts in this form is to give the promisor a special advantage, viz: the benefit of a falling market.

It is only necessary to observe that, to perceive how entirely different in principle is the appellant's mortgage. A man who contracts to pay $1,000 in cloth, at fifty cents a yard, if cloth is worth only twenty-five cents per yard at the maturity of the note, can be discharged by tendering it, and will be relieved from one-half the burthen of his obligation. He will gain by the speculation, at the expense of the promisee.

In this case, the transaction was not a *speculation*—it was a loan of money on mortgage security, one of the methods of investment recommended by law to the appellant, and the parties for their mutual security, selected as the medium of payment the most perfect known standard of value. They have followed the common practice of men in making contracts of long duration and employed the ordinary safeguards, used heretofore, when money of different values has been in circulation.

And now allow me to call the attention of the Court to a most useful case, and which throws more light upon this subject than perhaps any I have examined, and which has been quoted by His Honor, the Chief Judge, in his opinion, read in the legal tender case. I refer to the case of Faw *vs.* Marsteller, 2 *Cranch.*, p. 10. That case shows that

the parties who made this obligation, were dealing with no new question. It was new to this generation practically, but it was not a new one to our predecessors. In the State of Virginia, where the question arose which was presented in the case of Faw *vs.* Marsteller, the people had been laboring under all the disadvantages of co-existent and unequal currencies. There had arisen a great evil which bore heavily upon the debtor class at the resumption of specie payments, and which is directly the converse of the evil which we are discussing in this case. When a hard money currency was resumed, it became the duty of the State, as was supposed, to protect every citizen who had made, during the periods of the greatest depression, contracts payable in currency, because, when called upon to pay them in specie there was great hardship and consequent complaint. How was that difficulty met? And we are now at a turning point corresponding to the state of things presented by the case of Faw *vs.* Marsteller. The Legislature of Virginia passed a law after the adoption of the Federal constitution, providing for the relief of parties who had entered into a certain class of contracts—contracts which were to mature, and which had been made NOT in gold, or tobacco, or other commodities, but in the currency of the times; a law to remedy what appeared to be a crying evil, for the particular benefit of the debtor class, who did NOT stand in the place which the mortgagor occupies in this case. The law was in substance, that a certain scale of depreciation should be adopted and should be applied by the Court in the adjustment and the satisfaction of contracts made in currency. If a contract was made when the currency had depreciated fifty per cent, it should be satisfied by the payment of fifty per cent. The case came before the Supreme Court of the United States, upon a lease. It was argued that the rent which was payable by the lease, was subject to be reduced by the application to it of the scale of depreciation. Chief Justice Marshall read the lease. There was nothing in it about gold or silver money; but there happened to be in the Statute a clause, which in particular cases gave the Courts a discretion in regard to the application of the remedy. He held that the case was within

the operation of the law; that by the terms of the law, the rents being payable in currency, and the lease being made at a time when the scale showed that the currency was so much depreciated, it should be cut down a certain per centage. But, on looking at the lease and considering the value of the property and the evidence tending to show that the parties, in fixing the amount of rent, intended that it should be paid in hard money currency, he regarded their intent in making the lease, as a guide to himself in the exercise of the extraordinary power which the act conferred. Therefore, in a case where parties, in a period of depreciated currency made a contract upon gold basis, although they had not so stated it in terms, the Court recognized the fact and applied it in the settlement of the liability. The use which I make of that case, is two fold: to show that the parties might make a discrimination, and that to make such a discrimination is laudable and useful; and that unless parties do make it, evils will arise or may arise, which it may subsequently be the province of the legislative branch of the government to cure.

In the case of Faw *vs.* Marsteller, there was not a syllable to show that it was against public policy for parties to make contracts payable in gold; on the contrary, the very fact that they had been so improvident as not to do so, made it necessary for the Legislature to intervene.

Chief Judge DAVIES: The embarrassment in this case is this: assuming that it was competent to make a contract, payable in gold or silver, this is a contract payable in "gold or silver coin, lawful money of the United States of America." Is not that a designation, not of "gold or silver coin," but of the "lawful money of the United States of America," as the medium of payment?

Mr. TOWNSEND: It is the designation and selection of a particular KIND of lawful money as a medium of payment, instead of lawful money GENERALLY. I have already made a suggestion, which I have intended to bear upon that point, if I have understood the Chief Judge correctly; viz., that these parties, in making their contract, made it in refer-

the parties who made this obligation, were dealing with no new question. It was new to this generation practically, but it was not a new one to our predecessors. In the State of Virginia, where the question arose which was presented in the case of Faw *vs.* Marsteller, the people had been laboring under all the disadvantages of co-existent and unequal currencies. There had arisen a great evil which bore heavily upon the debtor class at the resumption of specie payments, and which is directly the converse of the evil which we are discussing in this case. When a hard money currency was resumed, it became the duty of the State, as was supposed, to protect every citizen who had made, during the periods of the greatest depression, contracts payable in currency, because, when called upon to pay them in specie there was great hardship and consequent complaint. How was that difficulty met? And we are now at a turning point corresponding to the state of things presented by the case of Faw *vs.* Marsteller. The Legislature of Virginia passed a law after the adoption of the Federal constitution, providing for the relief of parties who had entered into a certain class of contracts—contracts which were to mature, and which had been made NOT in gold, or tobacco, or other commodities, but in the currency of the times; a law to remedy what appeared to be a crying evil, for the particular benefit of the debtor class, who did NOT stand in the place which the mortgagor occupies in this case. The law was in substance, that a certain scale of depreciation should be adopted and should be applied by the Court in the adjustment and the satisfaction of contracts made in currency. If a contract was made when the currency had depreciated fifty per cent, it should be satisfied by the payment of fifty per cent. The case came before the Supreme Court of the United States, upon a lease. It was argued that the rent which was payable by the lease, was subject to be reduced by the application to it of the scale of depreciation. Chief Justice Marshall read the lease. There was nothing in it about gold or silver money; but there happened to be in the Statute a clause, which in particular cases gave the Courts a discretion in regard to the application of the remedy. He held that the case was within

the operation of the law; that by the terms of the law, the rents being payable in currency, and the lease being made at a time when the scale showed that the currency was so much depreciated, it should be cut down a certain per centage. But, on looking at the lease and considering the value of the property and the evidence tending to show that the parties, in fixing the amount of rent, intended that it should be paid in hard money currency, he regarded their intent in making the lease, as a guide to himself in the exercise of the extraordinary power which the act conferred. Therefore, in a case where parties, in a period of depreciated currency made a contract upon gold basis, although they had not so stated it in terms, the Court recognized the fact and applied it in the settlement of the liability. The use which I make of that case, is two fold: to show that the parties might make a discrimination, and that to make such a discrimination is laudable and useful; and that unless parties do make it, evils will arise or may arise, which it may subsequently be the province of the legislative branch of the government to cure.

In the case of Faw *vs.* Marsteller, there was not a syllable to show that it was against public policy for parties to make contracts payable in gold; on the contrary, the very fact that they had been so improvident as not to do so, made it necessary for the Legislature to intervene.

Chief Judge DAVIES: The embarrassment in this case is this: assuming that it was competent to make a contract, payable in gold or silver, this is a contract payable in "gold or silver coin, lawful money of the United States of America." Is not that a designation, not of "gold or silver coin," but of the "lawful money of the United States of America," as the medium of payment?

Mr. TOWNSEND: It is the designation and selection of a particular KIND of lawful money as a medium of payment, instead of lawful money GENERALLY. I have already made a suggestion, which I have intended to bear upon that point, if I have understood the Chief Judge correctly; viz., that these parties, in making their contract, made it in refer-

ence to the possible future introduction of other lawful money than gold or silver. They knew that contracts, without some designation of a particular kind of currency, would be payable in whatever money was current at the time they matured. They knew, too, that the government had power to adopt other kinds of currency, and they contracted, in reference to that contingency, which has occurred. I used that argument to show that the language employed was not unmeaning, and that the mortgage was not to be construed as if it had not existed in the contract. The parties contracted with reference to the powers which the government might exercise; which other governments had exercised; and which our government, for sufficient reasons, did. Hereafter, I propose to argue that the two kinds of money were not intended by Congress to be equivalent, and that they were not in fact equivalent.

I have but a single further remark to make upon the question of the construction to be given to this mortgage. Among those who controvert the validity of gold contracts, all have not denied that they should be read according to what we claim to be their manifest meaning. In Schonberger *v.* Watts, 1 Am. Law Reg., N. S., p. 554, Judge Hare says of a similar contract, "if the subject matter of this contract is such that it might be dealt with freely, at the pleasure of the parties, then their express agreement that the bond should be paid in specie, should have that effect given to it, which they must be presumed to have intended, and the debt be treated as one which gold and silver alone can satisfy."

My next proposition is, that the Court will give effect to the contract according to its import, unless it work intolerable injustice to a party; or unless the well-being of the State forbid; or unless the Court is powerless. This contract, far from working intolerable injustice to a party, is equally fair to both. That was what was intended to be shown by minutely examining the relations of the parties in the first instance. If there is any preponderance of advantage, it is in favor of the party who incurs the obligation, it being, as has been before stated, more for his bene-

fit to select the medium of gold for payment, and agree to pay $7,500, in gold, on a contract of ten years duration, than its present equivalent in currency. The fact is seen by practical men, who refuse to commit their fortunes to the fluctuations of paper currency, on a falling market for gold, when they know that their obligations can be fixed with reference to the best known legal standard. This consideration is one, which has not been noticed in the reported cases, and which must commend itself to every thoughtful mind.

I have alluded by way of illustration, to the bonds offered by the Central Pacific Railroad Company of California. Can it be doubted that that company have been influenced by the consideration, not merely that in the form selected the bonds would be more acceptable immediately, but also, that in the future, by the appreciation of our paper currency, the difference in value between it and gold will be obliterated?

Public policy does not forbid the enforcement of this contract; on the contrary, sound policy requires it. To justify the annulling of a contract, it must first, contravene the clear intent of the government; and secondly, it must do so to the detriment of the public interest. This contract does not contravene a clear intent of the government. The act of February 25th, 1862, does not, in express terms, say that gold and notes shall be equivalent. It is the presumed equality of gold and paper in which all the decisions opposed to the validity of gold contracts rest. They proceed upon the idea that Congress intended to make the two kinds of money equivalent. Unless that proposition can be sustained, these cases fall.

The passage of the legal tender act was undeniably a most remarkable event in the history of Federal legislation. If we can conceive of a student ignorant of our history, who should attempt to form some idea of it from a perusal merely of the laws which appear upon the statute book, we might suppose that his attention would be violently arrested by the mere fact of such a sudden reversal of financial po-

licy as that act exhibits. *A priori* he would infer that something very extraordinary must have occurred in the history of the people. He would not be surprised to find on investigation, that the occasion for the law was no less than a struggle for the very life of the nation, involving it in the necessity of putting forth its utmost strength. He would find that the success of the government depended not merely in the valor of the soldier, but quite as much on the maintenance of the public credit. That therefore when the government was induced by inevitable necessity to coin its credit, it resorted to every conceivable means to give its issues the highest value, it declared them to be money, it gave them the quality of a legal tender; in short, the government *intended* to give its notes all the currency and value possible, with the *desire* and with the *hope* that they might be equal in value to gold. But there is a wide difference between intention and mere hope or expectation, and no intelligent being can be said to intend the accomplishment of that purpose, the fullfilment of which depends on the operation of causes not within his control. What the intentions of the government were, we shall attempt to gather from the language used in the act, and from the nature of the subject. At the threshold of the discussion of this topic a peculiarity is observable in the phraseology used by some who assert that all kinds of money are equivalent. Congress, it is said, having the power to regulate the value of coin, has depreciated it "*for every purpose cognizable by the Courts*," to the level of paper money, or "*for all the purpose which the law can contemplate*," or in "*legal contemplation*," or has made the two "*legally equivalent.*". The law which furnishes the rule for human action, has been said to be the perfection of human reason, else it could not be the wisest rule. Practical injustice has been said to be the result, not of defect in law, but of the ignorant application of it. Have we been mistaken in this? Are there truths which the law can *not* recognize; things to which it is blind; values so delicate that it cannot appreciate or determine them? If there are, how can the scales of justice be evenly held?

The answer to these questions is, that all these phrases are

injurious and false; there is no purpose which the law cannot contemplate, nor a difference in value which the law fails to recognize. Such phrases are but qualifications, hazarded without due reflection, in the attempt to escape from the embarrassments which result from accepting without question, the strange fallacy that things unequal in their nature, can by statute be made equal.

Congress, in the first place, did not say in express terms that the two kinds of money should be equivalent. The third section of the act is familiar, but permit me to call attention to it: it is declared that the notes shall be receivable in payment of all taxes, internal duties, excises, debts and demands of every kind due to the United States, except duties on imports, and of all claims and demands against the United States of every kind whatever, except for interest upon bonds and notes which shall be paid in coin—and shall also be lawful money—and a legal tender in payment of all debts, public and private, within the United States, except on imports and interest as aforesaid.

However comprehensive the language may be and whatever inference may be drawn from the use of the terms "lawful money" and "legal tender," still the act does not say in express terms that the two kinds of money shall be equivalent.

Nor can it be inferred from the general language used, that the government intended to make them equivalent. In order to determine satisfactorily what the government intended in this respect, it is absolutely necessary to arrive at some fixed notions as to what we mean by value—by equality of value—and also as to what we mean by money—and by the value of money. Fundamental and essential as these ideas are, they seem to have been generally overlooked, and the reported cases, adverse to the validity of gold contracts, assume at the outset the truth of propositions in respect to them which we deny.

What is value? Value is not synonymous with utility. Everything of value must be of use, but every useful thing has not exchange value. Air and water are useful in the

highest degree; but neither has value in the sense in which we use the term value, because they can be ordinarily appropriated without labor. But we can conceive that air may become of priceless value, if it is conveyed to a person in danger of suffocation, in a crowded room, a dungeon, or the interior of a diving bell. Water too may acquire exchange value, when conveyed to a city, or a high level, or a dry locality. In this enquiry, by value is meant value for purposes of exchange. Permit me to refer to a state of society where the arts of production have made certain advancement, but there is no money. Commerce will exist. The baker will exchange his bread for clothes, the tailor his clothes for bread, and iron will be exchanged for any other commodity in demand. Values will exist, and without money. The idea of value precedes that of money. The next thing to be noticed, is that value is entirely independent of price, there being no money. Corn is worth what it will bring in exchange for bread or coal. We also perceive that there is no such thing *as a general rise in values.* The very suggestion involves an absurdity. All things cannot rise in value any more than forty growing trees can overtop each other. There are but two classes of things of value for the purposes of this enquiry. One of them, gold, does not belong to—that is the class of which the production is limited; which cannot be produced indefinitely—these have a monopoly value. Take for example the pictures of Raphael, or coal, or wheat in a season of accidental scarcity. Their value does not depend upon their cost of production, but simply upon the law of demand and supply. A picture of Raphael, though he may have painted it at small cost of labor and materials, or created it by the slightest effort of his immortal genius, has a value dependent upon the number of his pictures in the market, and the value which people are willing to give for them in exchange. Then there is the other large class of things which can be produced indefinitely, in which gold is included. The value of gold, like the value of wheat, corn and oil, depends upon the cost of production. These things tend to exchange for one another at such values as will repay the cost of production with the ordinary pro-

fit, or as it may be stated, things of the same cost of production will ordinarily exchange for one another—else one thing will yield a greater profit than the other, which can be produced at the same cost, and will be produced in preference.

If the demand exceeds the supply of anything, the value rises until more capital is thrown into that branch of business; production is stimulated until the supply increases, when the demand slackens; then the value falls again until the cost of production renders it unprofitable to produce the article. There are certain things, such as coal, gold and wheat, which can be produced indefinitely; but when the quantity is increased, the production of the increased quantity, can only be effected at more than a proportional cost. For example, from Schuylkill county, Pennsylvania, let us suppose that coal can be brought to market with a profit at six dollars per ton, but in limited quantities; if the demand exceeds the supply, the price will raise to eight dollars per ton—at which price it will pay to mine coal from more remote and difficult regions, which are accordingly worked, and the price of the whole is eight dollars per ton. The cost of working the more difficult mines, regulates the price of the whole; if the demand falls off, the more remote and difficult mines will become unprofitable to work, and will be gradually abandoned. In practical confirmation of this theory, I read a slip lately cut from the "Philadelphia Ledger:"

"The tonnage (coal) for the year is 8,567,304 tons, being "an increase of 2,809,979 tons over the tonnage to the "same time, in 1865. The price of the coal is nearly steady, "and *on the average*, probably covers the cost of putting it "into the market; while this is the case, producers will not "generally discontinue work, and permit their mining force "to scatter wide away. Coal cannot, it is believed, fall in "its present price. Those working mines not favorably "situated will let up as much as possible to retain their "hands within reach in case of a re-action in the market, "which it is believed will take place towards the close of "the season."

In this class of things, demand and supply determine the perturbations of value above and below their *natural level* —the cost of production.

In this class of things, there is one—gold—which has certain peculiarities. It is a most remarkable substance; its possession is universally desired—almost as much as that of fuel or food. Its consumption is so exceedingly slow as to be almost imperceptible. Possibly the gold which was carried out of Egypt may exist to-day and be passing over some counter in the shape of eagles; its possession has been coveted in all ages of the world and by all people, whether rude or civilized. From the exceeding slowness of its consumption, and from its being so generally desired, it was very early adopted as a standard of value. The slowness of its consumption was one of the many reasons which caused it to be adopted. If coal were the standard, it would be found that by the process of combustion so many millions of tons would be consumed every year that the value from day to day would greatly fluctuate. So it would be with wheat, or almost any substance that could be suggested as an appropriate standard of value. Therefore men's minds very early turned to gold as a standard of value, as being the most desirable substance known, and as subject to the least fluctuation, because of the slowness of its consumption—and this, be it remarked, wholly independent of the action of governments. In the state of society which I have imagined, there were great inconveniences—values subsisted—but there was no authorized common measure of them—commerce was very much obstructed. It could not get on without money. If a tailor wanted bread he might starve before he could find anybody who would deliver to him a quantity of bread equal in value to a coat, and then much of the bread might spoil before he could eat it. Every time he exchanged a coat for a horse, or for wheat or bread, a different calculation had to be gone through with, on different data. But by expressing the value of everything in dollars and cents a common language would be obtained—an invention of itself so useful as to justify its adoption, even if a dollar and

a cent did not represent anything whatever. In Africa, it is said, there is a denomination of value called a "macute," which does not represent anything, but is used to enable the people conveniently to effect their exchanges.

At this point governments intervened to facilitate the operations of commerce. They found that the voice of mankind, without dissent, proclaimed gold to be the substance of all others the best adapted to the desired purpose. It was also conveniently divisible, plastic and portable. What did they do? They *coined it* by stamping it with a die, and they coined it so cheaply that nobody could compete with them in the mechanical operation of coining it. That is the only reason why they coin it almost gratuitously; because if they did not coin it almost gratuitously every skillful mechanic would be coining money for himself. Now what is the difference between *gold coined* and *gold uncoined?* Is there any mystery about it? Coined, it becomes money; melted, it becomes bullion. When gold rises in value above its stamped denomination, when an ounce of bullion becomes more valuable than a doubloon or double eagle, there is on one who is not an idiot who will not convert a doubloon or double eagle into an ounce of bullion. It can be hammered out or melted. *Coined it acquires no new value.* It is by this process that I have endeavored to grasp and make entirely familiar the simple idea that there is no mystery about money, or the motives which led to its invention, or the purposes it serves. You find numerous dicta that gold is now a commodity, and then it is money? Stamp gold with the effigy of the power of the government, and it is money. You will find that some have said that the government might adopt shells, or iron, or pewter as money. That Lycurgus, from ascetic motives, adopted iron as money in the commerce of Sparta. And if he did? and if he coined a piece of iron and called it by the name of the most valuable gold coin existing, would anybody take it as such by virtue of his edict, and part with value for it? Not at all, unless the penalty of refusal was to lose a head. If Lycurgus said he would redeem every iron coin with a gold coin,

and people had faith in the government credit they would receive the iron coin, but then he would be coining, not the iron, but the credit of the government. No government, by merely coining iron, or shells, or wampun, can give them any new value. The effect of Lycurgus' edict was, that few in Sparta would engage in trade, and out of it the iron coinage had no value at all.

What do we find was the phenomenon when money was first introduced? We find, what we have ever since known, that everybody wants it, and as much as he can get of it. People may have as much bread, or cloth, or coal, as they require, but they never have enough money. In this respect of demand it is not like any other known substance. The market for coal or wheat may be glutted, the money market is never glutted. All the goods in the market are offered for all the money in the market. It always has been so and always will be so. If a man does get money for his goods to-day, it is because he expects to get more money for them to-morrow. All the money in the market constitutes the demand for all the goods in the market, and the whole of the goods in the market constitute the demand for money. In the operations of trade, money is bought and sold like any other commodity; with money we buy wine, with wine we buy money.

There is one other consideration which I had nearly overlooked. It is that the idea of DEBT is entirely independent of the idea of money. The idea of debt existed prior to the introduction of money. A man will owe just as much without money as with. A hundred measures of oil, or a hundred measures of wheat were always just as much a debt as a hundred dollars, and the introduction of money had no effect on that question.

Now, if the whole of the goods in the market represents the demand for money, and all the money in the market represents the demand for goods, it follows that every country will possess and have in circulation, temporary fluctuations excepted, just that quantity of money which will perform the exchanges required of it, consistently with the cost of its production. What is the effect of an increase of

the amount of money in circulation, the goods to be exchanged not being equally increased in quantity? It raises the price of everything—of all the goods in the market. That is precisely the effect, and the magnitude of the effect depends upon the amount of money that is added to the circulation. I do not mean to say that all the goods on sale in any country are represented by an equal amount of money; because a piece of money may go through ten or twenty hands before it performs all its offices in reference to the purchase of goods. Each dollar buys a dollar's worth of goods, but each dollar is laid out many times before all the goods on sale are removed from the market. The quantity of money in circulation, laying out of view the influence of credit, depends upon the amount of goods for sale, and the rapidity of the circulation. If each piece is laid out ten times while goods to the value of $1,000,000 are sold, it is evident the quantity of money required to circulate these goods is $100,000.

But it may be said that I have overlooked the influence of private credit, which may very much affect and reduce the amount of money required in any country. Permit me to take one step further in the imagined progress of society. Individuals gradually came to use their credit in the form of book accounts, bills and notes, as a substitute for money. The same amount of money will effect a great deal more in purchasing, if there be a great deal of credit. Therefore, the amount of money required for circulation depends upon the amount of individual credit in use, and if the increase of money in circulation beyond the increase of goods create a rise in prices, it is evident that an expansion of credit—credit being a substitute for money—will have a like effect. I mention these things, that it may be understood that the influence of credit in prices has not been overlooked. But credit being merely a substitute for money, cannot alter the properties of money,—and the influence of credit on prices, cannot change the laws which regulate the influence of money on prices. Money and credit are like two rivers uniting in one channel, flowing from different sources, exerting the same influence. If the combined torrent be swollen, it

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may become uncontrollable and sweep all before it. We may, therefore, lay out of view entirely the influence of private credit as a substitute for money.

As has been stated, if the amount of money in circulation be increased, prices are raised, the quantity of goods remaining the same. But as ordinarily foreign trade exists, whenever in any country prices rise at home, imports are stimulated, because it is cheaper to make purchases abroad, while at the same time it becomes unprofitable to export anything. Commodities flow into the country and gold rapidly flows out, until by this very expeditious process or some similar process, the equilibrium is restored.

We have now arrived at a definite conception of value, viz., purchasing power—of money and its properties—and of the value of money.

Governments eventually discovered that they could use their credit as a substitute for money. It may be shown that this power may, within certain limits, be exercised to the advantage of the government and the people, for an issue of paper liberates a certain amount of gold, which may be used more profitably in a variety of ways, than by serving merely as a circulating medium.

Suppose the government has coined its credit into convertible paper, to the amount of five hundred thousand dollars, and there is already a circulation of a million of dollars of hard money. The price of everything will tend to rise; because there is more currency in use, than is required for the operations of trade. What is the consequence? —it happens every day. The prices in our market rise, and the prices in England remain the same. The people send to England to buy cloth or other commodities, because they can get them cheaper there, and the gold flows abroad to pay for them, until the surplus currency is removed, and prices assume their normal standard. It is sufficient simply to state the proposition. Experience in practical life verifies it over and over again. Suppose the government issues convertible paper currency to the whole amount of the hard money currency in circulation, so that there is a million of each kind of money? Prices rise im-

mediately here, while they remain the same abroad. Gold flows abroad to the foreign market, and goods come here in return. Gold continues to go out until it all disappears, and the required million of currency remains. An extreme case is stated, merely to illustrate generally the operation of the principle. It is impossible to issue, and keep in circulation convertible paper, to an amount exceeding the amount of circulation required, for prices rise as before, including the price of bullion, and the convertible paper is returned to the government for redemption as fast as issued.

Suppose the government adopts an inconvertible currency, and keeps it within the limits of the amount of circulation required for the purposes of trade in the country, what is the effect? It is precisely the same as if it were convertible currency. If the purposes of trade require one million of dollars of hard money, and the government furnishes in addition, one million of dollars of inconvertible money, it is just as if it were convertible. Gold flows out and goods come in, until the amount is reduced to what it was before. But inconvertible paper, confined to this limit, is never resorted to, because it might as well be convertible if so restricted.

When we have an inconvertible paper currency, issued beyond the limit which is required for the purposes of trade, it becomes redundant, and what is the effect? Prices rise at home, including the prices of coin and bullion. The currency is not depleted, and it cannot be depleted, because there is no longer any unusual profit in importing goods from abroad, because when paid for there, they have to be paid for in gold purchased at a premium. Cloth may be four dollars here, and three dollars in England. In order to pay for the cloth in England, a premium of twenty-five per cent. is paid for gold. Exports are not stimulated, imports are not repressed, and the prices of everything remain inflated, *including the price of coin and bullion, which are convertible each into the other.* There being no outlet for the surplus currency, the depreciation of paper money will continue so long as the supply of currency exceeds the quantity

required for the purposes of traffic in the markets of the country.

If your Honors please, I have now accomplished what is to me the most difficult portion of this discussion.

Difficult, from a fear that I may be thought to have unduly persisted in stating too much at length those elementary principles of political economy which constitute the theory of value ;* but to us it seems of vital importance to bear them distinctly in mind. I cannot conceive how any one can pass upon the question of the relative values of the two kinds of currency without first ascertaining what is the nature of value and what are the uses and properties of money. These points have not been discussed in any of the reported cases. After considering these principles, the path to the result at which we aim is easy and plain.

What is the point at which we have arrived? That the people adopted gold, universally and by common consent, as the standard of value ; that governments then interposed and coined it for the public convenience ; that thereupon, and afterwards, they coined their credit, which was also a public convenience. Then we found, as exemplified in our own history, that, upon the inflation of the currency, all prices tend to rise, and that, ordinarily, the volume of currency is depleted bythe influence of foreign trade, and that this effect continues so long as the currency is convertible, and it continues although it be inconvertible, provided the currency does not exceed the required volume; but when the Government, beyond that limit, issues inconvertible currency, the operations of foreign trade cannot be efficient to deplete the currency, and hence all commodities continue at a high price, *including gold coin and bullion. In other words the paper money becomes depreciated.* That is the operation of a necessary law. It is a law inherent in the thing itself, and can no more be taken away from it by legislation, than the hues can be taken away from the

*They may be found in Mr. Mills' Treatise, entitled "Principles of Political Economy, with some of their applications to Social Philosophy." Book III., ch. 1 to 13.

rainbow; and thus it will be no matter how good the credit of the Government is, if the currency is inconvertible, when the quantity of it is unduly increased, and there is no outlet for it abroad, unless you suppose that a United States Treasury note will pass in a foreign market as the equivalent of gold. For the gold will flow abroad first to be employed in making purchases in the cheaper market, until it is exhausted. The paper will not follow, although every citizen have perfect faith in the Government credit. In the case of our own currency, enlarged as it is, perhaps the most potent causes which will bring the paper to the standard of gold will be, not so much the reduction by gradual payments of the national debt as the gradual expansion of our resources as a nation, the increase of our productive power, and the greater volume of our products seeking exchange, and requiring a greater volume of circulation to move them. Who can confidently predict that there may not, within a very few years, be actually needed a volume of currency as great as now exists which will bring the value of gold and paper to a very near approximation? This is an influence powerful and constantly acting, and which governments and individuals can never ignore.

It is the effect of the expansion of our currency, rather than any question affecting the credit of the government, which raises the value and prices of corn, land and fabrics of all kinds, because there is so much more money seeking an outlet to be exchanged for them. Foreign trade does not operate to reduce the volume, because all the foreign fabrics are purchased with coin.

I presume this will be found to be an accurate statement of the causes which have been operating, and with which we are all practically familiar. Therefore, I conclude, from the nature of the subject and the qualities inherent in the things themselves, that the government did not intend that the two kinds of currency should be of equal value, unless they did not intend to issue more than the commercial interests of the country absolutely demanded, as currency. If they issued more, they could not, in the nature of things, be of equal value.

Passing from that particular consideration, we insist that the acts of Congress themselves, satisfactorily establish, that it cannot be inferred from the language of the Act of February 25th, 1862, that the government intended to make the two kinds of money equivalent.

Mr. Selden, in the 8th page of his argument, uses this language:

"The very clause which makes the treasury notes a legal tender, recognises the distinction. 'Shall be lawful' money, and a legal tender in payment of all debts, public and private, within the United States, except duties on imports, and interest on government bonds and notes, which *shall be paid in coin.*"

"By the Act of March 17th, 1862, the secretary of the Treasury is authorized to purchase coin with any of the bonds or notes of the United States, authorized by law, at such rates and upon such terms as he may deem most advantageous to the public interest." (12 Stat. at Large, 345.)

"On the 17th of June, 1864, Congress passed a law, declaring that it should thereafter "be unlawful to make any loan of money not in coin, to be repaid in coin; or to make any loan of coin to be repaid in money, or currency other than coin."

How clearly the distinction is recognized by the acts of Congress itself, but in fact it was well known, independent of any such recognition. The "gold bill," so called, was an inconsiderate attempt to interfere with the natural law of things, which all men recognize. Men needed gold and the government required gold for certain purposes, and it was everybody's interest to procure it. The bill provided that no one should buy gold except at a certain designated place,—a place rented and paid for by the party who dealt in it. What was the consequence? The community became alarmed. People felt that they must go to one individual to procure their needful supplies of gold, and the result was the same as if a law had been passed compelling all to go to one locality to buy bread.. The price of gold

went up 100 per cent. by reason of that law. Judge Selden further says, in his printed argument:

"By the third section of the declaratory act, approved March 10th, 1866, all persons making returns of incomes, are required to declare in such returns, "whether the rates and amounts therein contained are stated according to their values in coined money," and if such values are stated in "coined money," it requires the assessor 'to reduce such rates and amounts to their equivalent in legal tender currency,' and the taxes are estimated accordingly." (See Appleton's edition of the Internal Revenue Laws, as amended in 1866, p. 110.)

Here again the government recognizes the distinction. Yesterday, in the daily newspapers, I saw the report of an action commenced in California to test the effect of that act, by a party making an income return. I believe the plaintiff in that action contends that the government has no right to recognize this distinction between paper and gold, and he occupied very nearly the same ground that the respondent does here. If that case proceed in the Federal Courts to adjudication, they will either decide that the plaintiff is right and that there is no difference between paper and gold, or they will decide, as we ask this Court to decide, that the two things are essentially different.

In the next place, the practice of the government establishes satisfactorily the same conclusion. Mr. Selden says: "the government purchases coin at market rates, in treasury notes, and demands coin, and accepts of coin only for duties." The government has made various loans, as to some of which the government loan expressly declared that principal and interest should be paid in coin. These loans Mr. Selden has enumerated, and he further says, that other loans have been authorized which are "payable in terms, in legal money only; of course, any legal money whether paper or coin," again he says: "The government, in time past, has borrowed in New York, for short times, large amounts of its notes at *five per cent. interest*, not

made payable in coin, and at the same office, very large amounts of coin at *four per cent. interest*, payable *in coin*, and has issued its oligations accordingly." That practice has been pursued under the directions of the Secretary of the Treasury, ever since there has been a difference of any importance between the value of gold and paper. Does that practice rest on no substantial difference? Is it not a recognition by the government of a difference? What would be thought of the repudiation by the government of such a contract? Again, Mr. Selden says, that the government "has also been in the habit of issuing "checks at New York, and giving obligations for *coin debts* "payable in coin as distinguished from legal tender notes. "And where sales of merchandise have been made for "coin, the government demands as the tax on such sales ($\frac{1}{8}$ "per cent.,) not one eighth per cent. on the sale price in "coin, but one eighth per cent. on the amount of legal "tender money of which such sale price in coin is the "equivalent. Among the questions which the assessors of "United States taxes are required, by the instructions from "the Treasury Department to ask, is this: 'Is you report "made on the basis of gold?' Suppose a man owning an "amount of stock were to elect to take his dividends in "*gold* at market value, and claim to be taxed on his income "only the amount of gold, would the assessor allow the "claim? Since 1834, when parties have had their goods "invoiced at their value in gold coinage prior to that date, "the government has seized and forfeited the goods for "under valuation."

The government, within the recollection of all of us, brought into market a large quantity of cotton which had been seized in southern ports, and that cotton was exposed for sale at public auction to the highest bidder, *for gold*. What would the Government Agent have said if some enterprising merchant had tendered him the amount of the purchase he had made, in legal tender notes?

In the progress of our argument we have insisted that, from the nature of the subject, there is a difference in the value of paper and gold; that the acts of federal legisla-

tion recognize it; that the practice of the government recognize it.

We come now to a consideration which is equally strong, which is, that the sense of justice implanted in us all leads to the same conclusion. In the language of Mr. Selden: "Suppose a trial were for the conversion of one thousand bushels of wheat, converted at a time when wheat was worth two dollars a bushel in treasury notes, and gold was at one hundred per cent. premium? How would the Court pronounce judgment in such a case?" Suppose, in 1833, parties had entered into a contract to pay $1,000, in coin, at the high standard of that year, or of a prior date, The debtor, in 1834, when the standard had been reduced, might have in his pocket a hundred eagles of the high standard, and yet attempt to tender an inferior coin; but it would not be honest, because he would be defrauding the party with whom he had made the contract by just the difference in the value of the two kinds of coin, which could be ascertained by weighing or by converting them to bullion by the melting process.

Take other cases suggested by Mr. Selden. "A merchant "gives his clerk $1,000 in gold to pay duties. Instead of "paying the duties the clerk sells the gold for $2,000 in "treasury notes, brings $1,000 of these to the merchant "and keeps the balance; or, suppose he keeps the $1,000 "in gold and allows himself to be sued for it. In the one "case he has cancelled his liability, for he received $1,000 "and he has returned $1,000—and in the other he has "taken only $1,000, and is, consequently liable only to a "judgment of $1,000, which he can immediately cancel "through the instrumentality of one half of the gold he took." "Or, if A gives $1,000 in coin to a common carrier for transportation, and he appropriates it to his own use," would it be honest for him to tender in payment $1,000 in paper? or, if I deposit with a banker coin which I desire to use for the payment of duties, would it be honest for him to return me $1,000 in paper? "Every broker "who collects government coupons in gold can pay the "amount in greenbacks to the owners of the coupons, and

"it must be regarded as a fair business transaction!" "Every sheriff who levies upon a quantity of gold coin can respond for its nominal amount in legal tender notes, and pocket the premium on the gold." That illustration, by a singular chance, was adduced by the Court in Massachusetts, in the case of Wood *v.* Bullens, 6 Allen, 516, one of the first cases which presented the question now discussed. The Court imagined the case of a sheriff who might levy upon an amount of gold under execution in gold, and pay the amount over in legal tender notes, and the Court appeared to think it would have no power to remedy such an act of iniquity. "Every executor, and every receiver, into whose hands gold may come, may pay the amount in currency and pocket the premium on the gold.

Judge MORGAN: I think you ignore the distinction between a bailment and a debt.

Mr. TOWNSEND: But what, after all, is the difference between a bailment and a debt? It is very thin. Mr. Selden uses this language, "It may be said that some of our examples present cases of tort, not of contract; but this is immaterial. The measure of damages, in an action of tort, for the wrongful conversion of property (excluding cases where exemplary damages would be allowable), would be exactly the same ordinarily as in an action for the failure to deliver the same property in pursuance of a contract *where the price had been previously paid.*" (Page 16.)

I presume that a deposit of coin with the United States Treasurer, or in the Bank of New York, is no more a bailment than the deposit of legal tender notes. A deposit of coin in 1866 is no more a bailment than in 1856. The depositor never expects to see the specific gold dollars again. They are no longer his. He looks for the return of an equal number of dollars.

An executor or a receiver is not a bailee in the technical sense. Suppose, in 1856, a merchant having four thousand dollars, wished to remit one half to A, in San Francisco, and one half to B, at Seneca Falls. He would purchase

at a bank two drafts or certificates of deposit, each for $2,000, endorse them, and send one to A and B respectively. There would be no bailment whatever in the transaction, except in respect to the safe custody of the evidences of debt, during their transmission to their destination. If the same merchant, in 1866, wishes to remit to A and B, each $2,000 in gold—he would go to the Express Company in New York, and to San Francisco he would send by telegraph or mail an order for the payment of $2,000 in gold to A; while to Seneca Falls he would send a sealed bag containing one hundred double eagles. In the latter cases, the one might be said to be a bailment and the other a debt. The only reason why there is a bailment in the case of B is, that probably gold cannot be conveniently procured in large sums at Seneca Falls, therefore the required quantity is actually transmitted in a bag.

The illustration serves to show that transactions morally and practically the same, may, by the operation of purely physical causes, be transmuted from a technical debt into a technical bailment. If both remittances were lost and the merchant were to seek indemnity, and in the case of the remittance to California should only be awarded fifty per cent. of his demand, while in the other case he recovered the whole, he would be sadly puzzled to tell the reason why.

It cannot be inferred from the use in the act, of the particular term "debt," that if an obligation to pay coin be a "debt," Congress intended to make paper and coin equivalent. The idea of debt is older than money. Paper money, by the operation of the act, may be tendered to satisfy a debt of $100, simply and as well a debt of wheat, coal or gold coin. A debt of one hundred measures of oil may be satisfied by legal tender notes; but before the notes can perform the office of a tender, the amount of the debt must be ascertained and converted into money. One may owe $1,000 in gold, and the notes are equally efficient as a tender. The idea of the *value* of paper money is not necessarily involved in the idea of its *capability of being used*

as a tender or instrument of satisfaction. The object in making notes a legal tender was to give them the additional utility, which would result from their being current in market; but it by no means follows that by their becoming an efficient instrument of payment, they became equal in value to gold. In this connection Mr. Selden says: "We do not deny that treasury notes are a lawful tender for ALL DEBTS, whether they arise out of engagements to deliver coin or to deliver cotton, or out of any other engagements or liabilities of any kind; but the question, What is the amount of the debt, and when and how is such amount *definitely ascertained*, so as to become liable to be cancelled by a tender or compulsory payment, must be determined before such payment or tender can be effectually made." (P. 23.)

From what has been stated, we conclude that it cannot be inferred from the language of the Act of February 25, 1862, that Congress intended that the legal tender notes should be equivalent to gold. As Congress did not say so directly, and as such an intent cannot be inferred from the language used, surely we cannot find such an intent at all. Therefore, the appellant's bond and mortgage recognizing the difference between paper and gold, do not contravene the declared intent of the government, and are not for that reason void.

But if the government did, in ignorance of the laws of political economy, intend to declare notes and gold equivalent, nevertheless this contract is not detrimental to the public interest, and void, because they are not in fact equivalent. If Congress attempted an impossibility, failing to notice the laws which determine the value of money, the contract being in accordance with those laws, works no injury to the public.

Stipulating for payment in gold, rather than notes, does

not impair the efficiency of notes as a tender, nor will contracts in this form be universally made to the exclusion of currency contracts. It has been stated by some of the jurists who have given opinions on the subject, that by the discrimination parties seek to nullify an act of Congress—that Congress has declared that these notes shall be a tender, and by a stroke of the pen it is attempted to produce an effect which is directly opposed to what Congress proposes. Look at the matter for a moment. How far does the discrimination impair the efficiency of these notes as a tender? I sell a house to-day: Does it make any difference to me what the medium of payment is, whether gold or Treasury notes? Does it make any difference to the laborer who receives the wages by which he and his family are supported, whether he is paid in gold or Treasury notes? It does make a difference to every one who is entering into an obligation which is to mature at a distant period, and it is for the interest of both the parties to such a contract, that the medium of payment should be the most fixed and stable known to the law. But this form of contract will never be resorted to, except in those transactions which are to run for a long time. In making those contracts, men have *always* sought to make them as stable as possible. We all know that in agricultural districts leases have often been made in which the rent has been payable in so many bushels of merchantable wheat. The motive of securing stability will operate with all men to the end of time, no matter what shall be the decision of the Court upon this question.

But it is said that a decision which recognizes this distinction will impair the credit of the government. What is the credit of the government? It is not like individual credit, and cannot be injuriously affected by the same causes. It depends upon the resources of the people. Governments impose taxes wherewith to pay their debts. Does it make any difference to the taxpayer in what medium he pays it? If currency is depreciated, he

pays a larger amount, computed in the depreciated currency, but not larger in reality.

How rarely do we hear of an insolvent government? It is because the government is financially the people. Its ability to pay depends on the people: upon their wealth, the results of their daily production, their traffic, their intelligence, and upon their sense of justice; and so long as the men of the country are determined that the credit of the government shall be upheld, what difference can it make whether there is one or two recognized kinds of currency.

The last position under this general branch of the case to which I wish to refer, is the argument which rests upon the idea that by the recognition of the difference in value between the two kinds of currency by the Court, an injurious impression may be made upon the public mind; that the recognition of this distinction may injure the credit of the government, by producing a sort of panic born of falsehood, which will result in actual injury. I do not believe that there exists in the community any want of discrimination upon this subject. There is no popular ignorance, which by being alarmed at the recognition of the fact might become injurious. If there be an error wide spread and dangerous it is to the Courts we look to dispel and not to foster it. Shall the Judiciary become an apostle of error? In questions of difficulty and when besieged by doubts it is to the Courts we turn for the elucidation of truth—their highest function. They do not sit merely to put in operation the ordinary machinery for the execution of justice, but lifted above the influences which vex our thoughts, to set at nought the fallacies which entangle us, and express in human language, in their judgments, so much of the higher attribute of wisdom, as is comprehended within the limits of the "perfection of human reason." At the end of no long period it will be a matter of general comment and astonishment that these questions should ever have been misunderstood by the Courts. The causes which are now

at work are so potent, that they will be irresistibly led to recognize the truths for which we contend. This Court, which includes within its jurisdiction the most important commercial community in America, is fully conscious of the far reaching influence of its determination in the present case. It can hardly be doubted that the Federal Courts will follow its decision, nor can it be doubted that the Courts in other States, even in those where this distinction for which we contend, has been overlooked, if this Court shall recognize it, will recede from what I hope your Honors will be satisfied is a false position, and return a recognition of the truth.

The last position which I shall notice is one which I hardly supposed would be taken at this day,—that, conceding the truth of the views which have been advanced, the Court is *powerless* to execute such a contract. The idea that in the year 1866, a Court of law, the perfect embodiment of human wisdom, and instituted for the very purpose of promoting the efficiency of justice, should be powerless to execute such a contract, is startling; and yet that statement has been made in adjudged cases. Even the old common lawyers devised new writs. They would resort to a fiction to attain justice. When their ingenuity was exhausted, the humane learning of the South, shocked at their formal barbarism, forced upon our ancestors the acceptance of the higher law of Rome. Yet it has been stated in Massachusetts and in Iowa, that our Courts are powerless. In the mean time Judge Ware, in Maine, has furnished a very reasonable answer to the proposition by a decree in Admiralty, giving effect to such a contract. The case was this: A sailor, an ignorant man, made a contract in New Brunswick to go to London. or other foreign ports, at a fixed compensation of so many dollars per month in the gold of the country. He went to London, and perhaps the Mediterranean; he received his stipend in gold and spent it. When he reached Portland, in the State of Maine, he was there told that by the operation of our laws,—of the

act of 1862, the amount of money due him instead of ten dollars was only some five dollars in gold. He libelled the vessel, and Judge Ware made a decree that he should be paid the amount of wages agreed upon in gold. The case is Trecarten *v.* The *Rochambeau*, 16 Am. Law Reg., 564. A canal boat was injured in a collision on the Canada shore, and a commissioner was appointed here to estimate there the damages, who reported the amount to be $450 in gold, or Canada currency. The report came to the United States Court for confirmation, when some one made the enormous suggestion that on account of the Legal Tender Act, the party should only be allowed to recover one half of the indemnity for the injury sustained. The Court refused favorably to entertain the idea, and they gave judgment for the full amount claimed. (Chouncer *v.* The *Griffin*, 14 Am. Law Reg., 45.]

Mr. Selden, in his points, has very fully elaborated this question of the power of the Courts to take notice of the difference, and the conclusion at which he arrives is, that the Courts do it every day. They have always done it unconsciously, and the idea only seems unfamiliar because we do not pause to consider now we arrive at the result, or to use a rude phrase, because we do not "think it out." An action is brought for the conversion of wheat. It is valued by two parties, one in gold and the other in currency. The ascertainment of value is always made by the Court, and the judgment runs in the cheapest currency known. That is the operation of the mind in every case which involves an assessment or estimate of damages. Permit me to quote the language used by Mr. Selden, p. 12. "This difference in value therefore between several kinds of currency (where such actual difference exists) is *an ever present fact with which all Courts* are required to deal and with which they do deal whether consciously or not, whenever they investigate or pass upon a question of value or of damages. We venture to assert that Courts, in all cases involving damages or values, not only recognize the difference in value between the different kinds of currency but they *invariably* assess damages and render judgment

by direct reference to the *cheapest* of the two kinds of currency. Suppose a trial for the conversion of 1,000 bushels of wheat, converted at a time when wheat was worth $2 per bushel in Treasury notes, and gold was at 100 per cent. premium, how would the Court pronounce judgment in such a case."

The defendant says the plaintiff is injured $1,000; by the Government standard (gold) you cannot recognise any difference in value between gold and Treasury notes. The plaintiff says, by the Government standard (paper) I have been injured $2,000—the law makes Treasury notes and gold of equal value. If the law forbids a recognition of the difference, why is not the plaintiff right. On the same assumption, why is not the defendant right. "To us there "is no difference. The Court has a right to RECOGNIZE "THE TRUTH wholly both of fact and law; on the one "hand that the gold dollars and the paper dollars have dif- "ferent *actual* values, and on the other that they have "equal legal values in the direct cancellation of debts; "and as it is apparent that the defendant, having the right "to pay the judgment when rendered in either currency, "will, of course, elect to pay it in the cheapest, it renders "the judgment for the sum, which paid in that currency, "will make the plaintiff whole for which he has lost."

dilemma

It is said that there would be very great hardship to debtors, and perhaps a tendency to oppress them, if a judgment could be recovered when gold is worth 250 in currency. That might be a hard case for the debtor. But suppose a contract is now made for $1,000 in currency, if the debtor is unable to pay, a similar hardship will exist, from the fact that currency is appreciating daily and will continue to do so until it reaches the standard of gold. Irregularities must occur in all seasons of great financial difficulty. When the course of trade is disturbed there will be weeks and months, and perhaps years, when there may be great perturbation in value, when everything is shaken as by an earthquake, and everyone who is called upon to close a transaction at such a time, is liable to loss. The wisest minds have been strained to the utmost

during such times to preserve their equilibrium in financial matters. If one should happen to be called upon to pay in gold when it was at a high premium, it might or might not cause him loss—that would depend on what his wealth consisted of. Certainly, no right minded man would feel disposed to impose a hardship unnecessarily upon his fellow man. But on the other hand, it is a great hardship to a creditor—under all conceivable circumstances—to have a debtor avail himself of the depreciation of paper currency to appropriate to himself a portion of his creditor's property as is attempted in this case—when the debtor appears in the attitude of pursuing his creditor and "paying him without mercy." Necessary evils must result from these fluctuations, and must continue so long as the fluctuations exist, no matter what may be the decision of the Court. All they can do is help men to do what it is alway desirable for them to do, to give to their engagements the highest stability, and sustain the validity of their contracts when they select gold as a medium of payment.

It has been urged that there is no known instance in which a Court has given judgment in damages for the breach of money contracts, except for the number of dollars mentioned in the contract and the interest. The instances perhaps are few, in which it has been done in set terms, because the occasions have been very few, and because ordinarily the reduction into the cheap currency has been unconsciously made in the act of arriving at a judgment. Mr. Selden, in his printed argument, on the 35th page, refers to cases in which Courts have distinctly given judgment for a greater number of dollars than are specified in the contract, before the operation of any statute, by reason of the difference in the value of money in different localities. They have given judgment against the drawer of a bill in New York, which he has promised should be paid in Hamburg for 20 per cent. in addition to the specified number of dollars to indemnify the holder for the difference in the value to him between dollars here and dollars in Hamburg. (See Hendricks *v.* Franklin, 4 J. R , 119. Grover *v.* Dash, 12 J. R., 17.

A statute was passed at a subsequent period, which I believe simply recognized what the law merchant prescribed at the time of its adoption.

It has been many times repeated, that the cardinal point in this whole discussion and upon which the determination of the case will depend, is whether these two values were intended by the government to be and were in fact equivalent. If we have solved this question and our solution is right, we have an instrument which will reconcile satisfactorily and easily all the anomalies which the subject presents, and exhibit in the clearest light the errors in law into which we think the Court below and some other Courts have fallen.

Let me refer now to some of the cases. The first case reported was Judge Hare's decision in Shonberger *v.* Watts, 1 Am. Law Reg., N. S., p. 554. Observe what Judge Hare says, speaking of the currency: "Currency is to the social "system what the circulation of blood is to the natural "body, which brings to the laborer the reward of toil, "to the merchant the returns of commerce, to the agri- "culturist facilities for exchanging his productions which "is literally and without overstatement, the means of "luxury, of comfort and of daily bread to each and all "in their several stations. It feeds and supplies the "community in time of peace it arms and maintains "the soldier in time of war, it is next to light and air, "and beyond all secondary and artificial agents, the most "pervading and powerful influence and that on which most "depends." How little of truth is there in that eloquent passage? Is it not almost immaterial, except for the purposes of convenience to the laborer or the merchant, what the currency is. The one has his labor the other his commodities, which he gives in exchange, whether the currency is good or bad. What luxury or comfort does currency furnish? In time of peace the community is fed by its labor, applied to direct the forces of nature not by the currency, and the soldier is fed not by the currency, but by the labor of the community stored in capital and advanced to the government freely, or paid in taxes, or taken forcibly by im-

pressment. It is true, that if the government should issue to its soldiers in the first instance a valueless token, the soldier would starve; and the reason why the soldier does not starve when he receives a bill of credit, is that the people are equal in resources to meet all the requirements of the government; it does not follow that the results of the laborer's toil and of the sweat of his brow, depends in any degree upon the nature of the circulating medium.

The enquiry is next made, Can it be competent for a citizen to discriminate where the law does not distinguish?—to which we reply, the law does distinguish. It is asked, Can it be competent to make a bargain, excluding a party, contracting from a means of payment open to all, and encumber him with a debt of a new and special nature? To which we reply, that legal tender notes are efficient to cancel any debt when ascertained, and that a debt, payable in gold coin, is neither new nor special. The learned Judge speaks of the legal tender act as "enabling" and "beneficial" and seems to discuss the maxim "*qui libet potest renunciare jure per se introducto*," as if the legislation in question were intended for the especial benefit of a class of debtors, like a bankrupt, or an insolvent law, or a stay law.

In the case of *Wilson* vs. *Morgan*, 30 Hon. Pr. R., 386, we find this language used: "Money, being the common measure of all things, has not, like other things, any particular function. It takes the place of all other things, but is only represented by standards created by law." What does this mean? What idea is intended to be conveyed by this statement of the qualities of money? "Money has not, like all other things, any particular function!" It has a function; it furnishes a common means of circulation and facilitates trade. For all the purposes of mere exchange it is a matter of entire indifference whether the currency be good or bad, except as its fluctuations in value produce derangement.

The learned Judge proceeds to say, at page 390: "Con-
"gress, by the legal tender act, has made a paper dol-
"lar the equivalent of a gold or silver dollar. Hav-

'ing the power to establish and regulate the value "of coin, it has *depreciated the value of gold and sil-* "*ver coin, for every purpose cognizable* by the Courts, to "the level of paper money."—"The power is not confined "to paper money—any other substance might be made the "medium of exchange and declared lawful money. The "uncoined and unstamped lots of silver of the ancients and "the wampum of the Indians were money."

If we have shown the unsoundness of these premises, the conclusion arrived at in the adjudged case must fall.

The opinion which was delivered by Mr. Justice Daniels in this action, which is an ably reasoned opinion from his stand-point, is defective, as we claim, because its ground-work is defective. He starts from this general proposition, that Congress has the power to alter the standard of coin. He infers from that, that debased coin becomes equal in value to coin of a higher standard, that government having power to make debased coin equal to coin of the highest standard, it can equally make its coined credit equal to the coin of the highest standard. There is the fallacy. Take the golden eagle of the highest standard, and you will see that upon every successive coinage as it is debased, the new coin is less valuable than the one preceding it. What is the consequence? It goes to the melting pot; it goes to the mint; it immediately disappears from circulation. It is impossible for the government to give value to a thing of no value, or equal value to a thing of less value. If the government coins glass and calls it a double eagle, it cannot make it equal in value to a double eagle, unless by its credit and the faith of the people that it will be redeemed in double eagles, it is made so; such a coinage would be refused, and no one having power less arbitrary than that possessed by the king of Dahomey, could induce the people to accept it. The fallacy lies in the corner-stone of the fabric; that by reducing the standard of the currency, government makes the lower standard equal to the higher, and therefore by coining paper, will make it equal to gold.

Judge WRIGHT: Is not an eagle of the old coinage a part of the circulating medium?

Mr. Townsend: It does not circulate; it goes out of circulation. If one has a Mexican dollar, it goes to the melting pot, or he sends it to the mint; in it he has so much bullion which is worth more than a dollar. No one ever sees a coin of a standard higher than the current standard circulating as money, unless in the hands of an ignorant peasant who does not know its value, or in the cabinet of a philosopher who does.

Judge Wright: That is treating it as an article of commerce.

Mr. Townsend: I have endeavored to show that in its essence and substance, the government credit which has been coined is but a substitute for the coin, and that when coined credit is issued by the government of the very highest credit in an excessive quantity, it immediately depreciates below the value of coin or bullion which are as convertible, each into the other, in the legal sense of the term, as they are by the operation of physical agents. That is my theory, and I believe it to be the true theory; and it is upon that theory that I have argued this case. And the fallacy of the argument of the Court below is in the fact that it asserts that this debasing of a coin makes it equal in value to coin of the higher standard, which it does not; and in the same breath it is said that governments may coin shells and copper, and make them equal to gold, which we know is not so. I think I can state very accurately the effect of the depreciation of paper money on a double eagle. I have 100 such on 25th Feb., 1862; I retain them for a year, until the depreciation of paper money becomes apparent; at that time I find that men generally have fallen into the habit of computing values in paper; my eagles cannot, therefore, be *conveniently* used for general purposes of traffic. They may still be circulated, but not as *conveniently* as before. It would be difficult in Hamilton County to use them as money advantageously. They are unimpaired in value, they merely serve less conveniently the purposes of money. If my acquaintance in trade is limited to that class who have still kept their accounts

in gold, I perceive no difference, my eagles circulate as money *conveniently* as before. If I go to California, I perceive no difference. During all this time as a commodity which they were when they emerged from the *matrix* in which they were coined—the eagles remain absolutely unaffected.

Passing from that, the Court, at fol. 91 of the case, gives currency to a popular idea that it is less a grievance to a capitalist to lose his property, than it is to any one else. How absurd in the eye of reason. Who is the capitalist? The farmer who has refrained from consuming his crop; who says, "next spring, I propose to buy yonder farm for my boy with the proceeds of the wheat which I have gathered into my barns." He sells it on credit and the currency depreciates, until when the spring comes he finds that he cannot buy the farm with the means he had set aside for the purpose. Will he not feel his loss? Will he not recognize the difference between a standard and an unstable medium? And will he not say "the grievance is to me hard to bear? What matters it to my hired servant who receives a stipend of equal value whatever be the depreciation of paper?"

The Court then proceeds to maintain that the bond and mortgage should be construed like a chattel note, and that the specification of gold as a medium of payment is mere surplusage, and has no meaning,—on which points I have sufficiently dwelt.

The case of *Luling agt. The Atlantic Insurance Co.*, in 30 *Howard's Practice Reports*, p. 69, is a very useful case, and one well worth the attention of the Court. It is a Special Term decision. The head note reads thus:

"Where there is a specific agreement between policy holders of a mutual insurance company and the company, that the premiums of the former shall be paid in gold, and the losses shall be paid by the latter in gold, the company, in declaring its dividends, are bound to allow such policy holders a certificate of their share of the profits in accordance with a gold standard as compared with currency."

The opinion is by Mr. Justice Miller. How reason-

able and just it is, that those who paid a premium in gold should receive a dividend declared on a gold basis. He says:

"Independent of any specific agreement, the ordinary currency of the country would be considered as the basis upon which the policy was issued, and upon which any settlement of losses incurred should be made and profit realized. As that was a special contract here, the premiums being paid in gold, and the losses payable in the same currency, the question arises whether the company, at the time it declared the dividends, should not take that fact into consideration, and allow the plaintiffs a certificate for their share of the profits in accordance with a gold standard, as compared with currency."

And the Court held that the company should do so, unless there was some legal obstacle in the way, and decreed accordingly, saying:

"The fact that the company issued two kinds of policies, receiving premiums in two different currencies, necessarily obliged its officers to pay losses in two different currencies."

The cases Wood *v.* Bullens, 6 Allen, 516, and Buchegger *v.* Schultz, 14 Am. Law Reg., 95, have been reviewed by Mr. Selden at pages 27 and 30 of his argument. The case of Warnibold *v.* Schlicting, 16 Iowa R., 244, should be briefly noticed. The Court starts with the assertion that the selection and specification of gold in the contract as a medium of payment, does not change the obligation from what it would have been, if there had been no selection, which point we have, as we think, fully answered. Again, we find the statement, that Congress, having made notes a legal tender, they have, under the act, the value of gold. This it has been our effort to disprove. The Court then says, gold is *not a commodity but money*, and adds. If a man borrow paper he treats it *as money*, and promises to repay it as such. If he borrows gold he may repay it in silver; if silver he may repay it in gold; if gold he may repay it in treasury notes. To which we say gold coined *is*

a commodity, and its value or properties are not affected by the fact of its being money. If other substances, or credit be adopted as a substitute for it, it is not outlawed, and since the repeal of the gold bill there has been no legal impediment in the way of lending it, to be repaid in kind or its equivalent in notes. The Court arrives at this conclusion, that a ten dollar legal tender note has the same legal value for the purposes of money as a coined eagle, a proposition which is so far opposed to universal experience, that it can only be accepted as true by ascribing to the qualification "for the purposes of money," a meaning which limits the assertion to a statement that the ten dollar note is equally efficient as an eagle, as an instrument of tender. In every other sense the proposition is manifestly untrue.

The Pennsylvania cases are reported in the New York *Transcript* on the 6th, 12th, and 15th of July, 1865. In these cases the power of selection of gold as a medium of payment was denied, but not discussed by the members of the Court who denied it. In the opinions read in these cases it may be observed that it is the Judge who sustains the constitutionality of the Legal Tender Act, who asserts that any one may select a medium of payment—it is the Judge who denies the constitutionality of the Legal Tender Act, who asserts that if it be a binding law, it is impossible to make a contract on a gold basis. A similar tendency in thought may not unfrequently be observed—it seems as if the habit, in advance, of magnifying and distorting the evils which might result from the Legal Tender Act, dis poses the mind when reluctantly compelled to accept that law, to give it the fullest opportunity to work the widest mischief possible. Permit me to quote the language of Judge Agnew:

"But I deny that actual damages cannot be recovered for the breach of a contract payable in a specified kind of lawful money. This is a question of value, when the loss must be valued in lawful money as damages, as part of the judgment. If, in fact, there be a difference in value between the several kinds of lawful money, which is made expressly by the parties to enter into the contract, this dif-

ference is recognized by the contract, because it is founded upon actual rights of property. A loss of value, by a breach of the contract, must therefore be compensated in damages, otherwise justice is denied against the constitutional rights of the citizen: Sec. 11, Const. Penna: "That all Courts shall be open, and every man, for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay." The judgment being payable in lawful money generally, and not restricted in kind, is necessarily payable *in the cheapest kind* of lawful money; for the moment that payment rests in the debtor's option as to kind, he *tenders the cheapest money* in the market that will pay his debt. For the same reason, values are always represented by the cheapest money in the market, because by far the largest proportion of payments rests in the debtor's option. Now, it cannot be possible that if I sell my property at its market value in one kind of lawful money, I am to be put off with payment of the same number of dollars in another of half its value, by considering the damages in the judgment merely nominal. Take an illustration: Being in need of gold, I pay two hundred dollars in Treasury notes, and take a note of certificate of deposit for one hundred dollars, payable to-morrow, in gold. To morrow my debtor tenders me one hundred dollars in notes, and when I sue him, asks me to be put off with nominal damages, and then tenders me one hundred dollars and six cents in notes upon the judgment. Is this the law, that actual values, substantial rights of property are to be wholly sunk in legal forms? I think not; it is a total denial of justice, and a wholesale destruction of the right to contract upon subjects *unforbidden by law or by public policy*. The party is in no fault. Neither he nor Congress can control the law of supply and demand, or abrogate the laws of trade. As to all other subjects, the law awards damages according to the facts; and why not for money, which is the subject of the inexorable laws of trade? If a tender be in money worth but half the money of the contract, it involves a loss which the judgment should not perpetuate. The judgment

should, therefore, include the actual damages, to make the party whole in lawful money, leaving the debtor to pay, as he certainly will, in the cheapost kind."

I shall not notice any other of the adjudged cases holding either view, but refer to Mr. Selden's statement of them.

I have now stated all the views which have occurred to me in the case.

We sincerely hope, if the Court agrees with the appellant, in regard to the validity of the discrimination which he has assumed to make, that the Court will not concur with those tribunals which hold that there is no judicial power to carry into effect such a simple transaction.

Chief Justice DAVIES: You have argued the matter precisely as if the words "lawful money of the United States of America" were not in the contract at all, and were of no consequence.

Mr. TOWNSEND: I think that the words of the contract call for a particular kind of lawful money. I have put the case upon the ground that there might be co-existing currencies—one of gold and one of less value or higher value, and that the specification of a designated medium of payment is significant.

Chief Justice DAVIES: If the contract said that the amount should be paid in gold coin, and stopped there, I would understand the full force of your argument; but there is added "lawful money of the United States of America." Do you suppose these words mean one or both?

Mr. TOWNSEND: I suppose they mean "gold or silver coin." The Government makes gold coin lawful money which has a certain value. It also coins its credit and makes its notes lawful money, thus introducing two co-existing currencies. Now the parties have contracted with reference to one of the two kinds of currency to the exclusion of the other. That is the argument. There may be two different standards. There is nothing in the nature of the subject which renders it difficult that there should be

two different standards; and here the parties have selected one with reference to its being of superior stability, from the fact that its stability is wholly independent of the action of the Government.

Judge WRIGHT: They selected the only standard existing at the time the contract was made.

Mr. TOWNSEND: Though they did select the only standard existing at the time, they did not select the only standard which might be in existence at the time of the maturity of the contract, because they knew that government had coined their credit, and they knew that our government might coin its credit, and they contracted with reference to that eventuality. That is the answer which I would suggest to the suggestion which your Honor makes. They knew that any ordinary contract would be payable in the money of account at the time of its maturity. In *Faw* vs. *Marsteller*, the rent became payable in coin, although the lease was made at a time when paper was the general currency, and therefore the Legislature interposed. These parties knew that unless they designated a particular kind of currency, it would be payable in money of account. They also knew, as we all did, in 1851, that when the emergency arose, the government might issue paper currency, and the contract was made with express reference to that state of affairs which actually came to pass.

In regard to the suggestion of his Honor, the chief Judge, as to the effect of the words "gold and silver coin, lawful money of the United States of America," it may be further said that the words "lawful money" are words of general description; the words gold and silver coin of particular specification. Apply to the construction of this contract the ordinary rules of construction. We are to ascertain what is the medium of payment described. The answer is, "gold or silver coin," for it falls within the general description used, and also the particular specification, which no other kind of money does. The intention of the parties has seemed to me so clearly defined, that in the argument I have attributed very little independent

force to the expression "lawful money of the United States of America," believing it to be absolutely controlled by the specification preceding it.

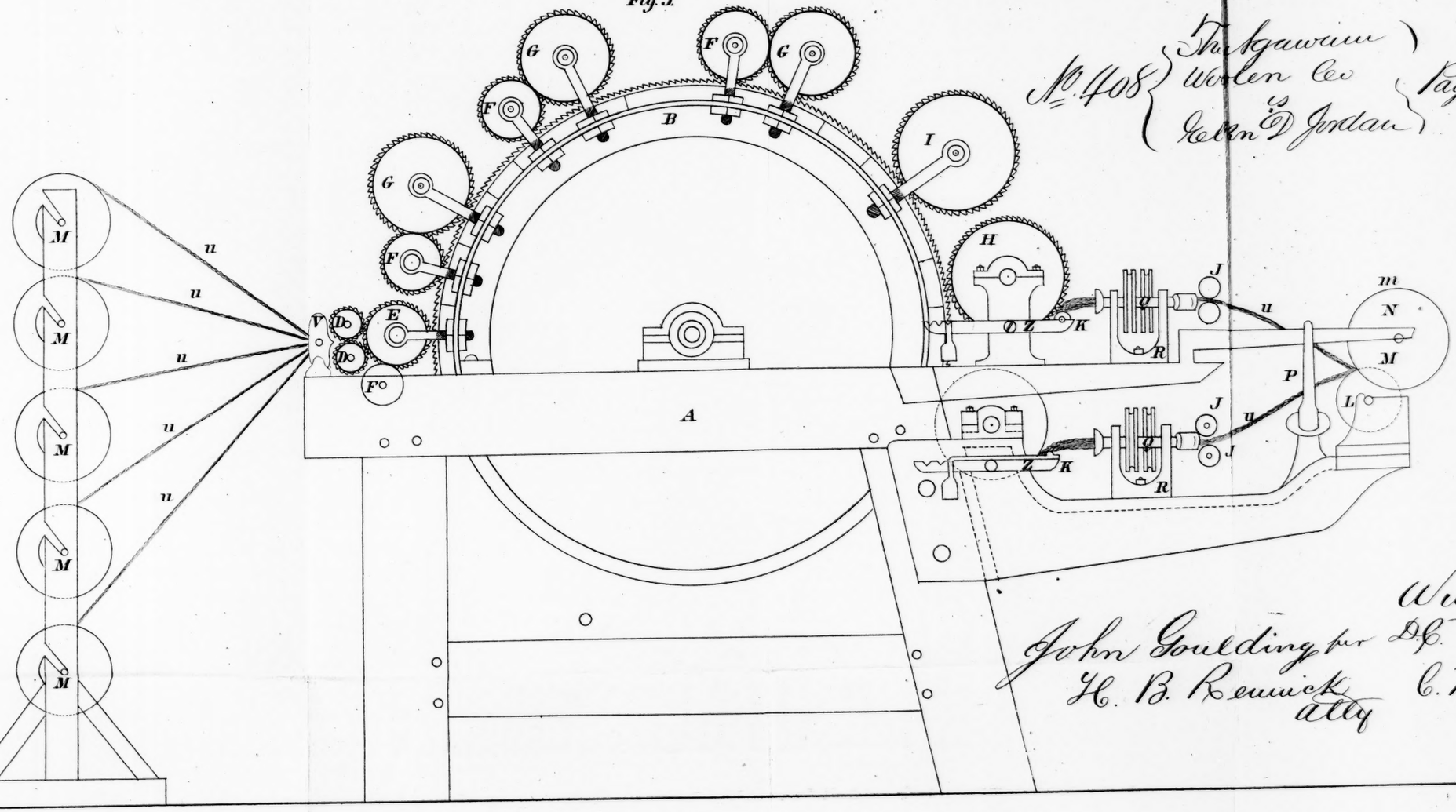
In answer to the first point made by the respondent. I refer to the language of Mr. Justice Grover, at fol. 113. "It will be seen that no authority is conferred upon the bank officers to modify the contract in any respect, but only to receive the payment specified in the contract, and credit the same to the plaintiff," and to that part of his opinion which immediately precedes, and follows this quotation.

In aswer to the fifth point made by the respondent. I take leave to quote the following language used by Mr. Justice Grover, at the 141st folio, in his opinion: "a point "not in this case was somewhat discussed, that is whether "the time of the breach of the contract, or of the trial was "be taken for the assessment of damages. I think right "reason requires that of the trial to be adopted. I am "aware that the time of breach is the time at which dam- "ages upon contracts generally are assessed. That, in such "cases, work sout justice. The object is effected by giving "an adequate compensation for the injury. In most such "cases the value of commodities change, and therefore "value at the time of breach is more likely in the great "mass of cases to afford just redress; but when the ques- "tion is between gold or silver coin, and lawful tender "paper, the value of the coin does not change; that of the "paper does. The party injured is entitled to his coin, "and interest at the time of trial. This precisely compen- "sates his injury, neither less or more."

No 1714.

To Jno Goulding's Improvement in Machinery for the Manufacture of Wool & other fibrous Materials.

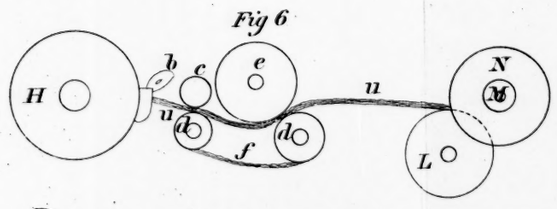
Fig. 3.



No. 408 { Thatcher Woolen Co / to / Helen D Jordan } Page 3 2. No 1

Witness
John Goulding per D.C. Lawrence
H. B. Rennick atty C.T. Jackson.

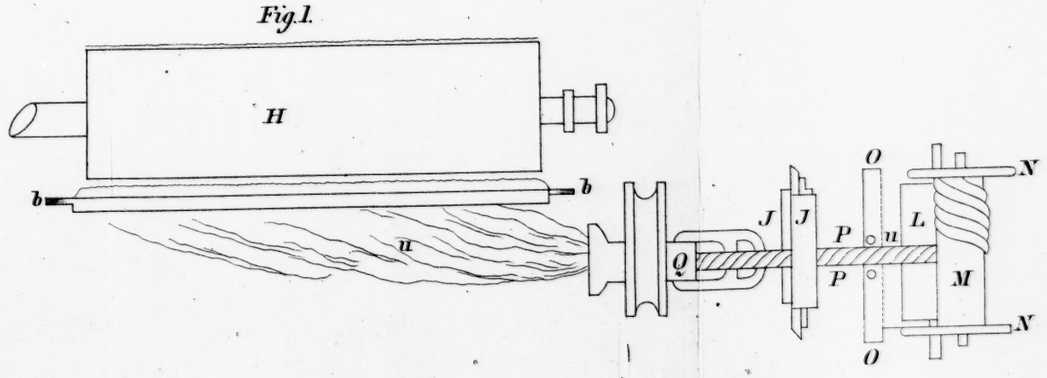
Fig 6



Correctly attached
Edward Bebb
Draughtsman
U.S. Patent Office

Fig. 9.

Fig. 1.



John Goulding
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Witness
D. C. Lawrence
C. T. Jackson

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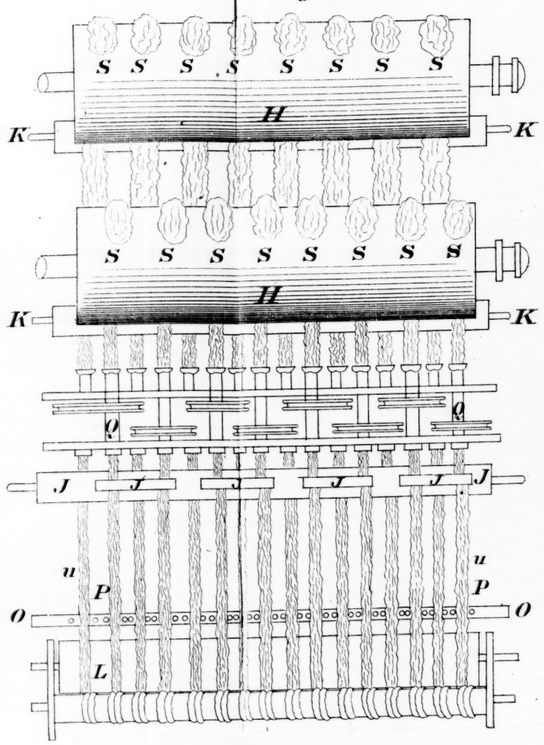
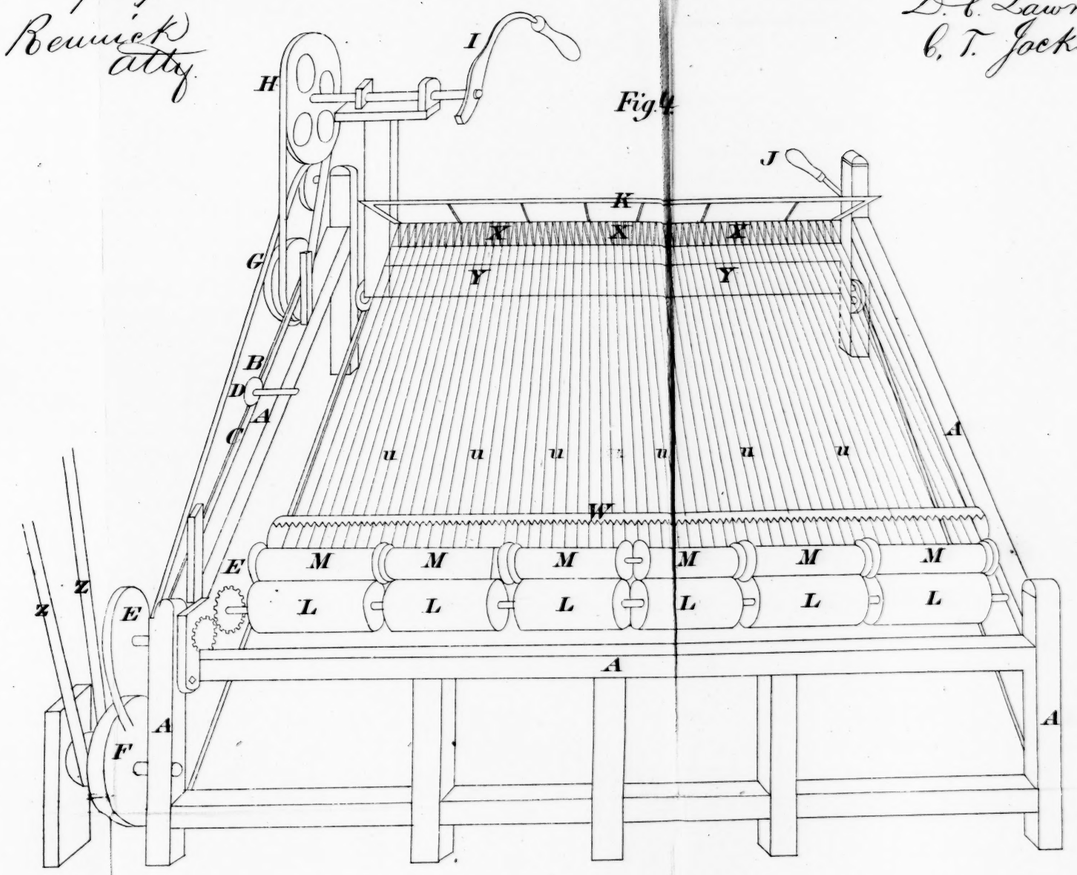


Fig. 4



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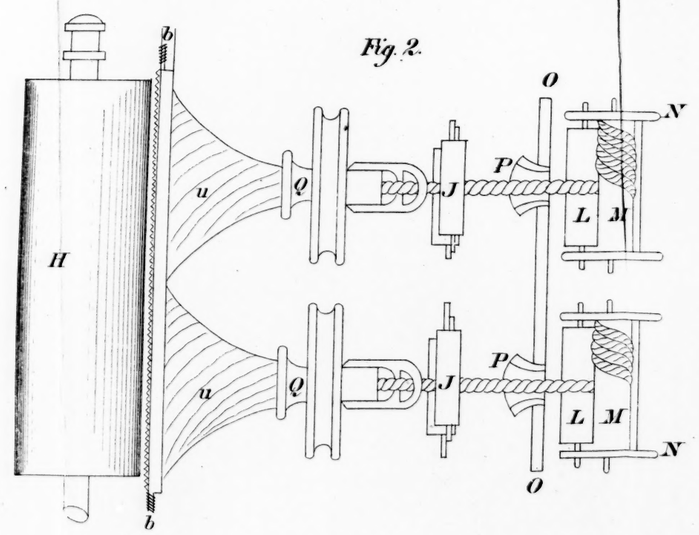

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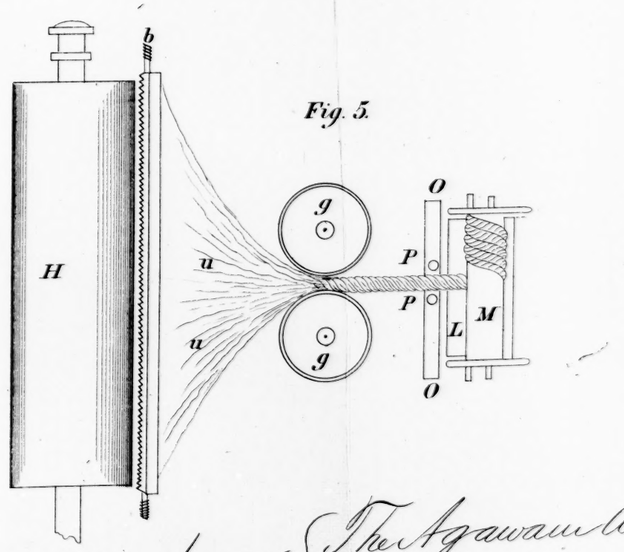
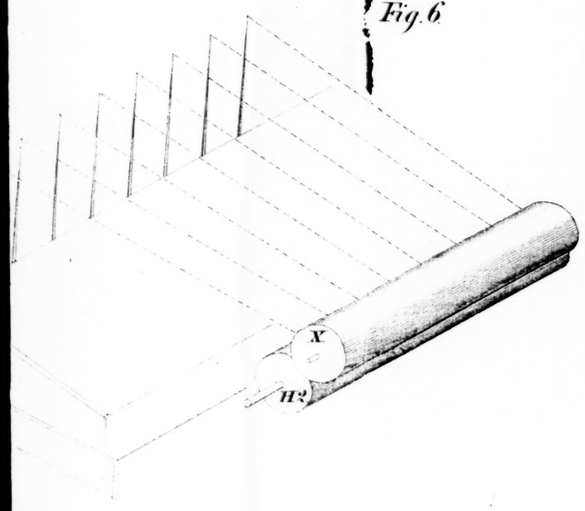


No. 408 { The Agawam Woolen Co. / Ebzn D. Jordan } Page 33.

Page 194.

Exhibit A.
C. W. T. Examiner

Fig. 6



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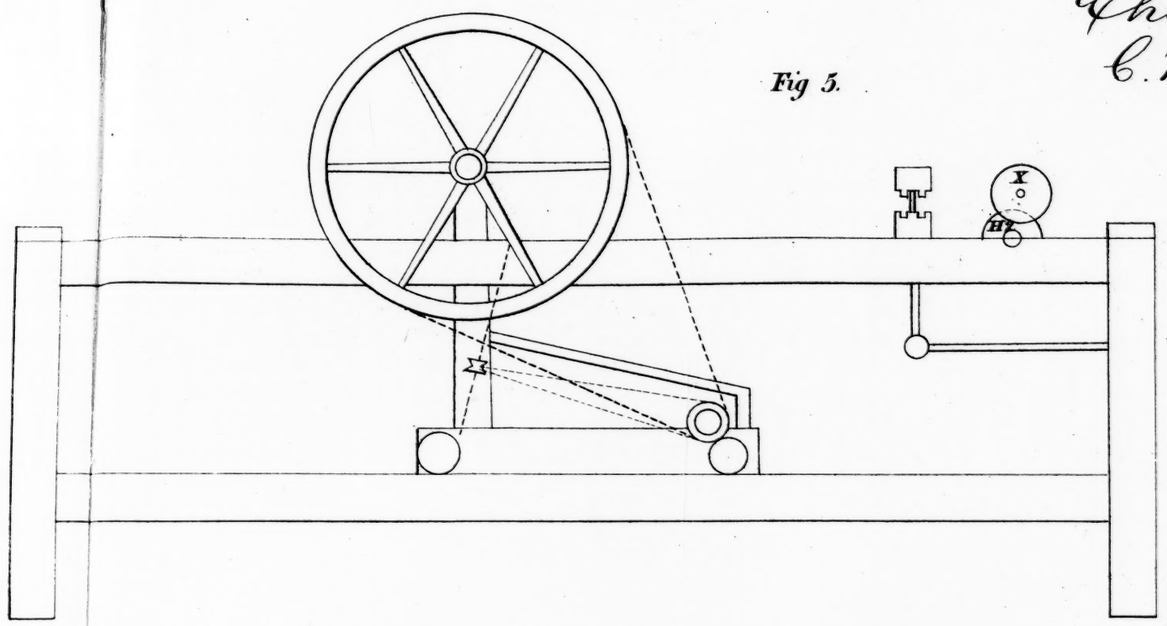


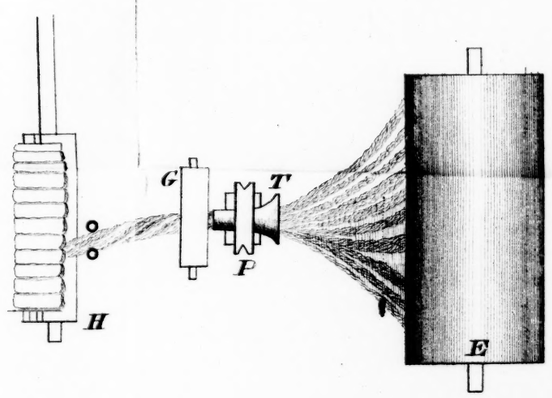
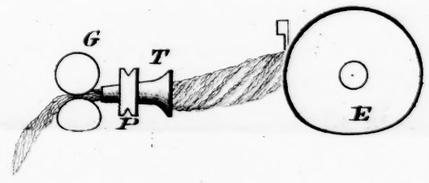
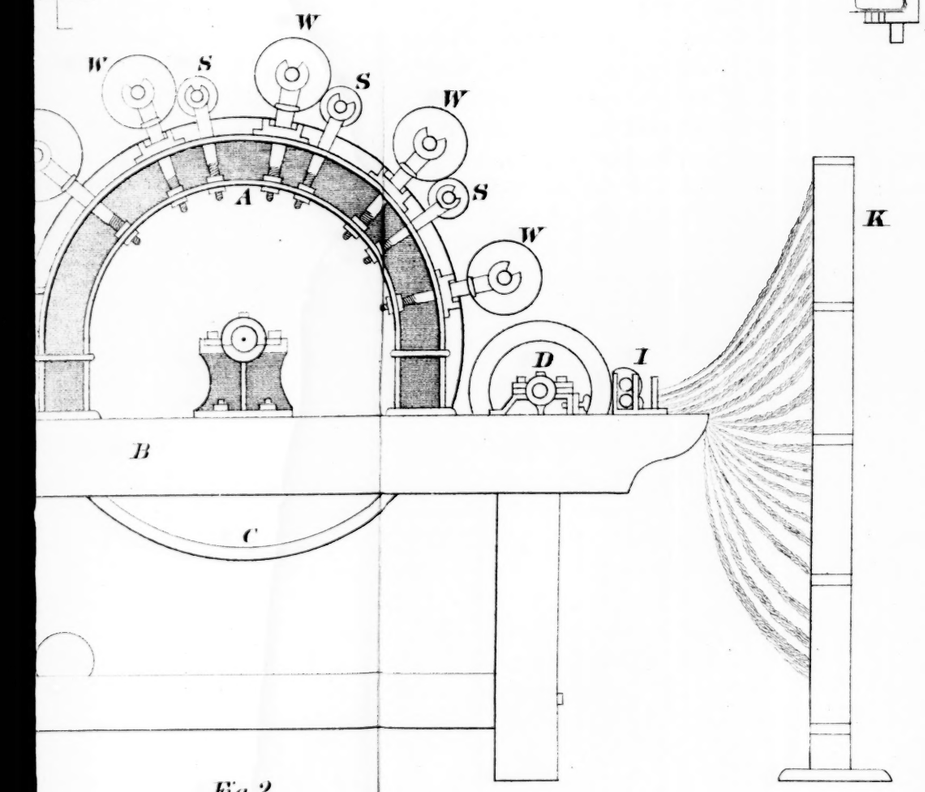


Fig. 3





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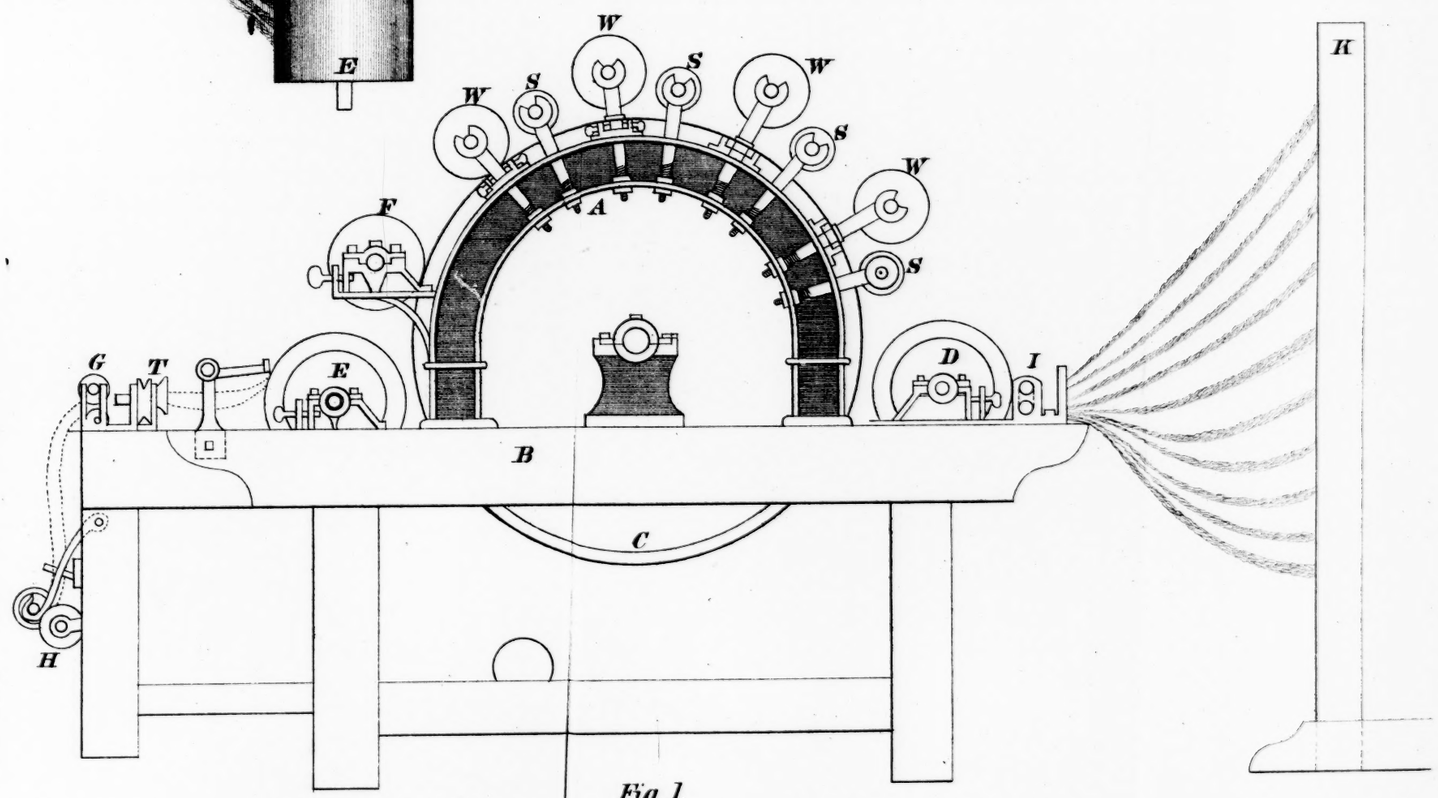
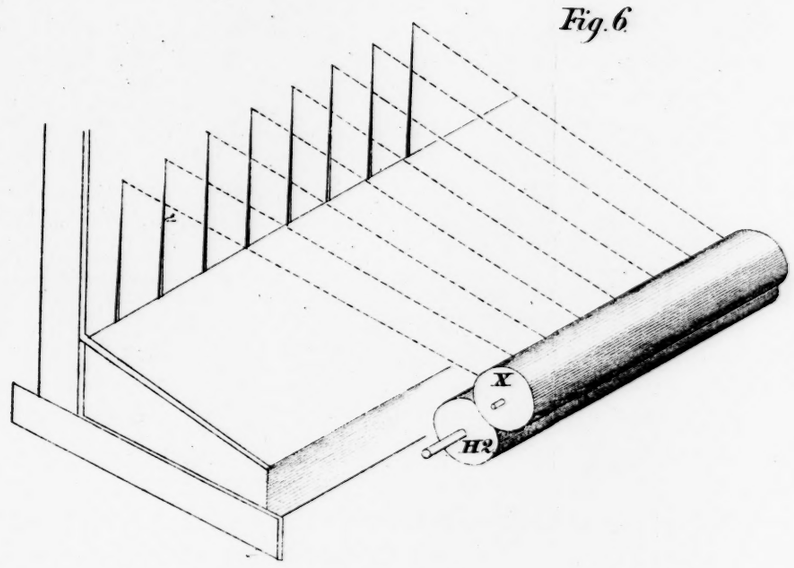
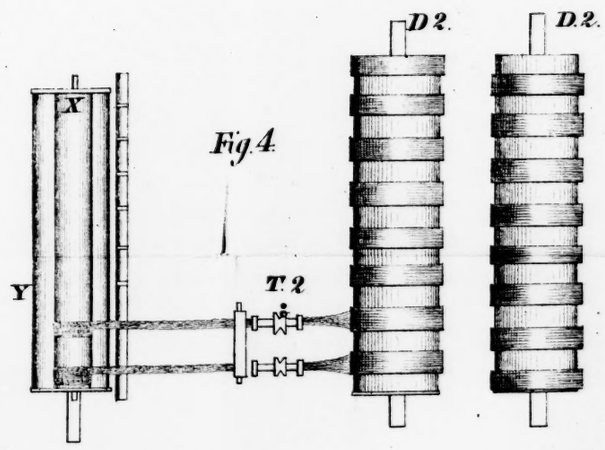


Fig. 1.

No. 408 { Agawam Woolen Co. / Ebn D Jordan } Page 194.

Fig. 6





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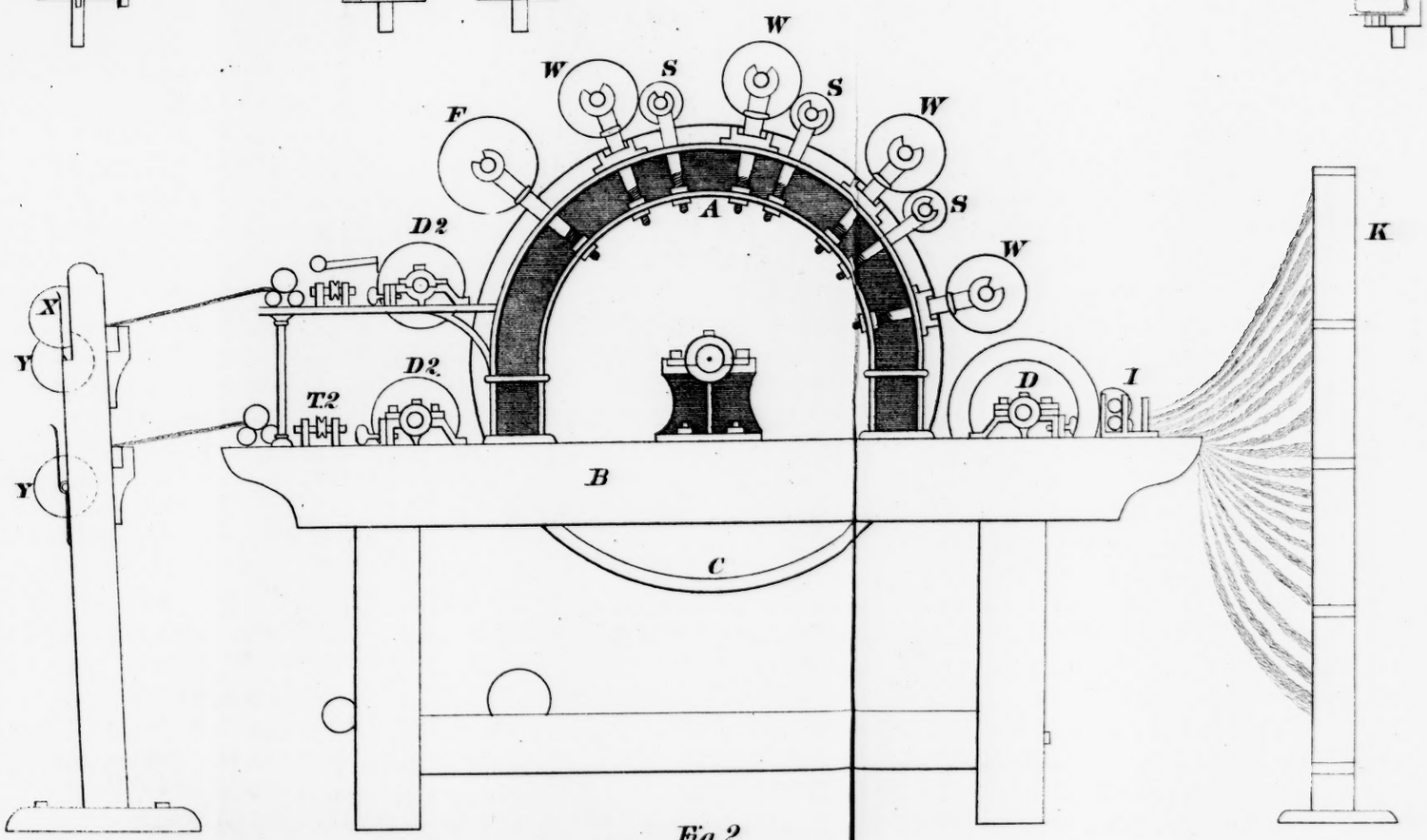

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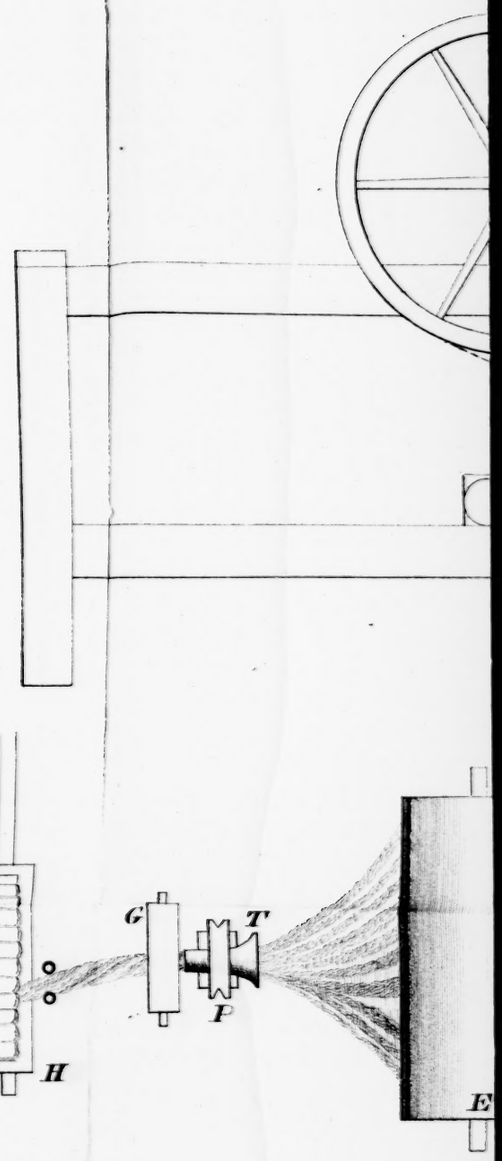
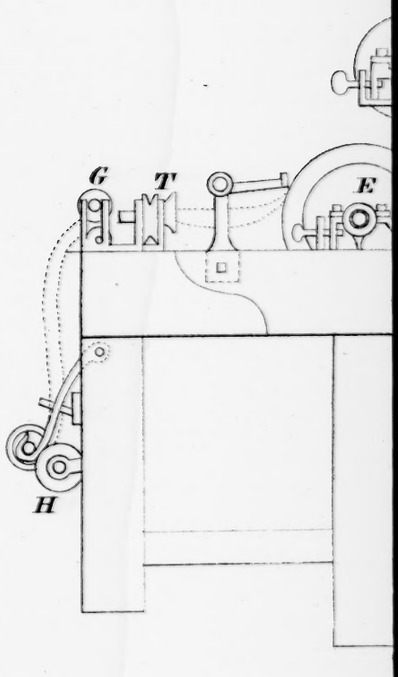
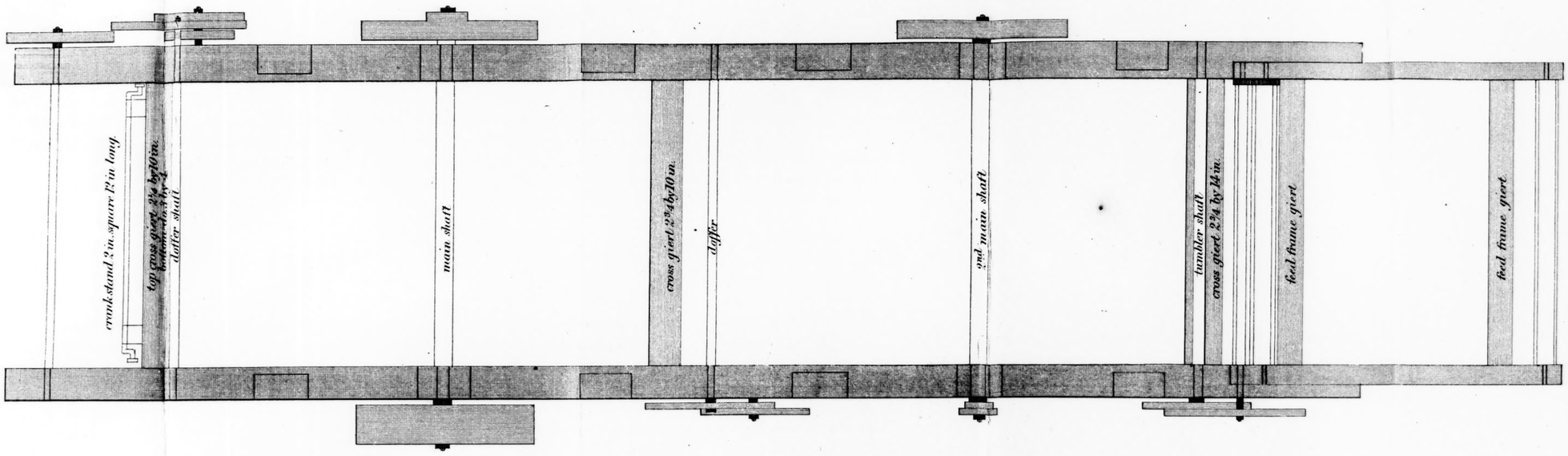




No 408 { Agawam Woolen Co / Elen & Jordan } Page 326 No 1.

Exhibit 15. C.W.T. Examiner

8 Finishers 30 inch sheets from 36 in. clear; main cillender 32 in. long doff do. fancy do. tumbler do. rolling cillender. workers, strippers roll & apron rolls to be 3¼ in. long or feed & apron roll 36 in.



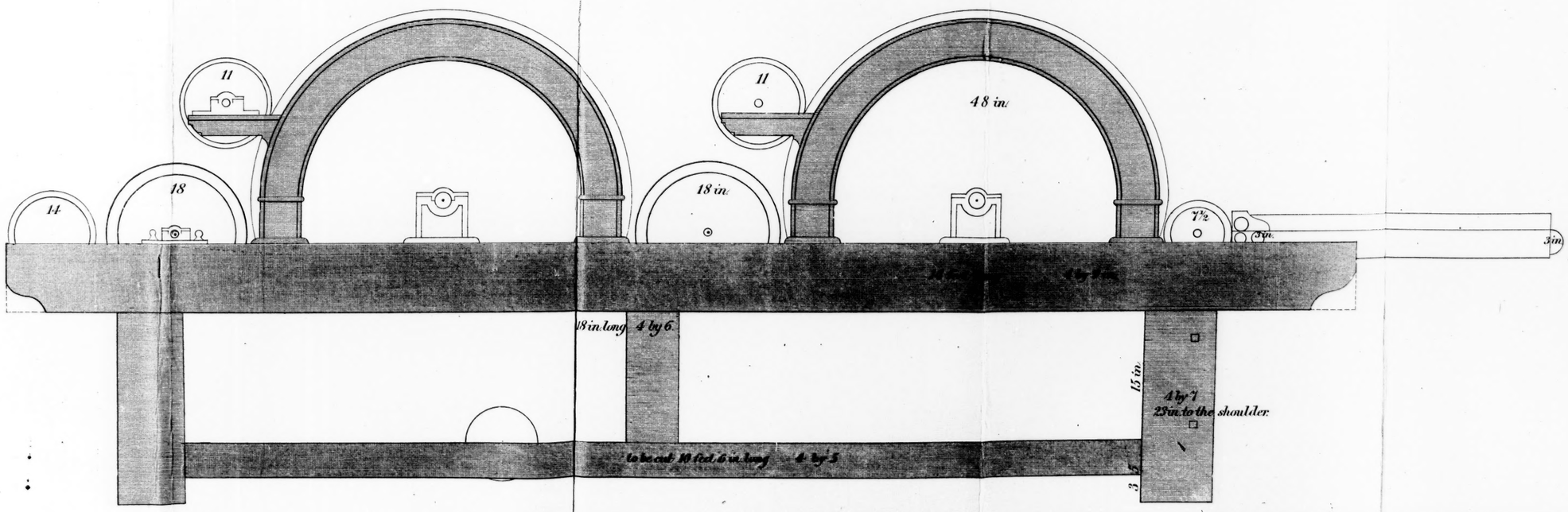
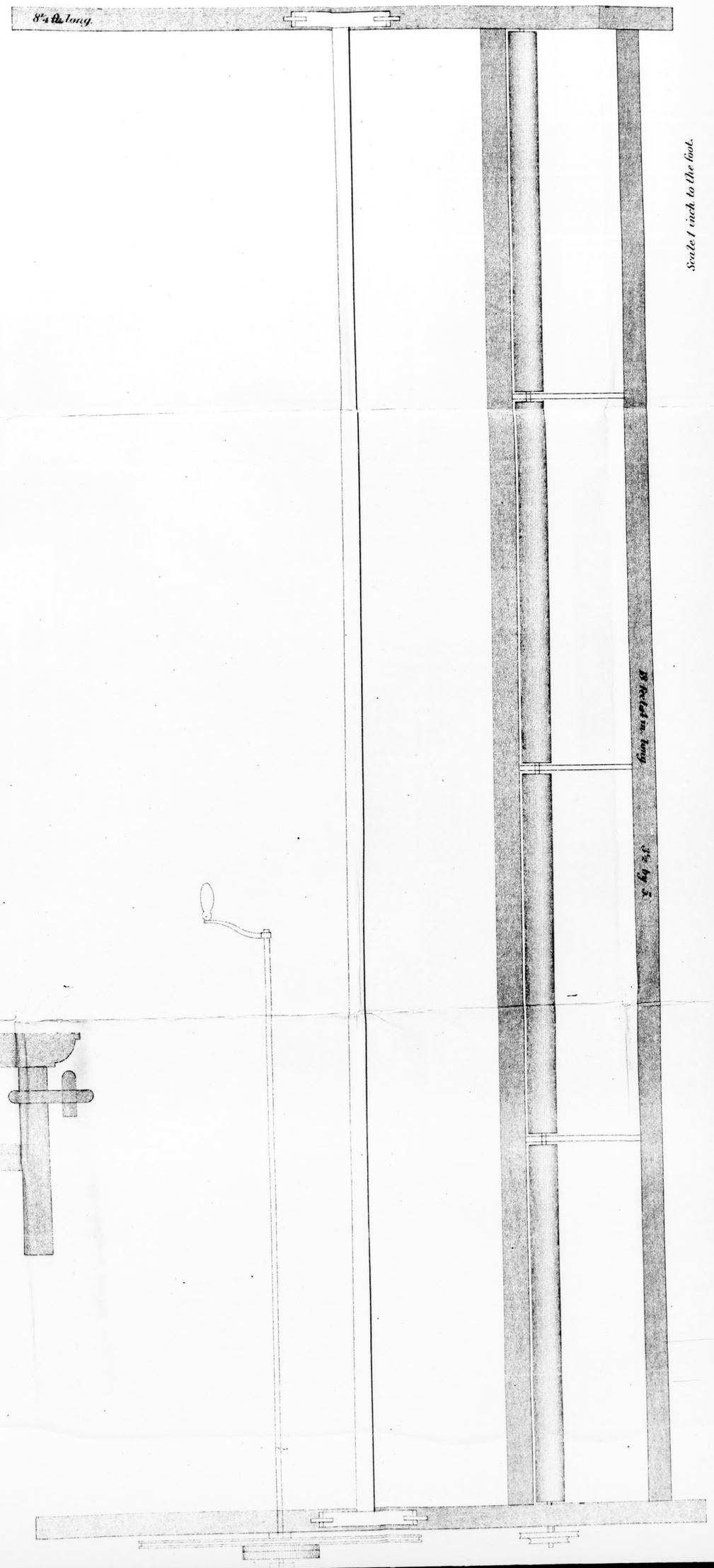
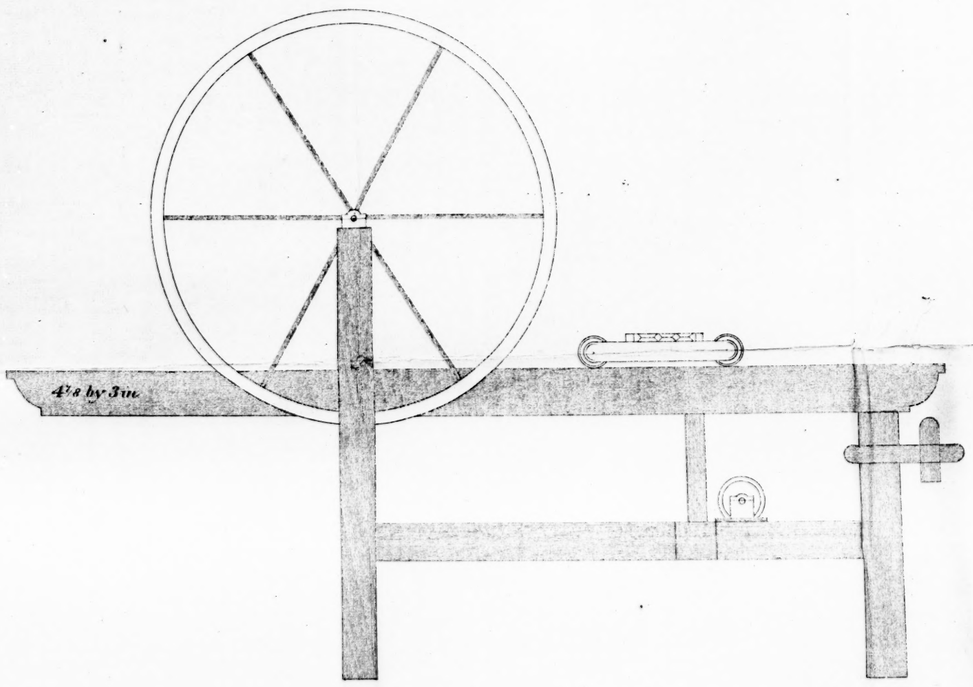


Exhibit 14. C.W.T. Examiner

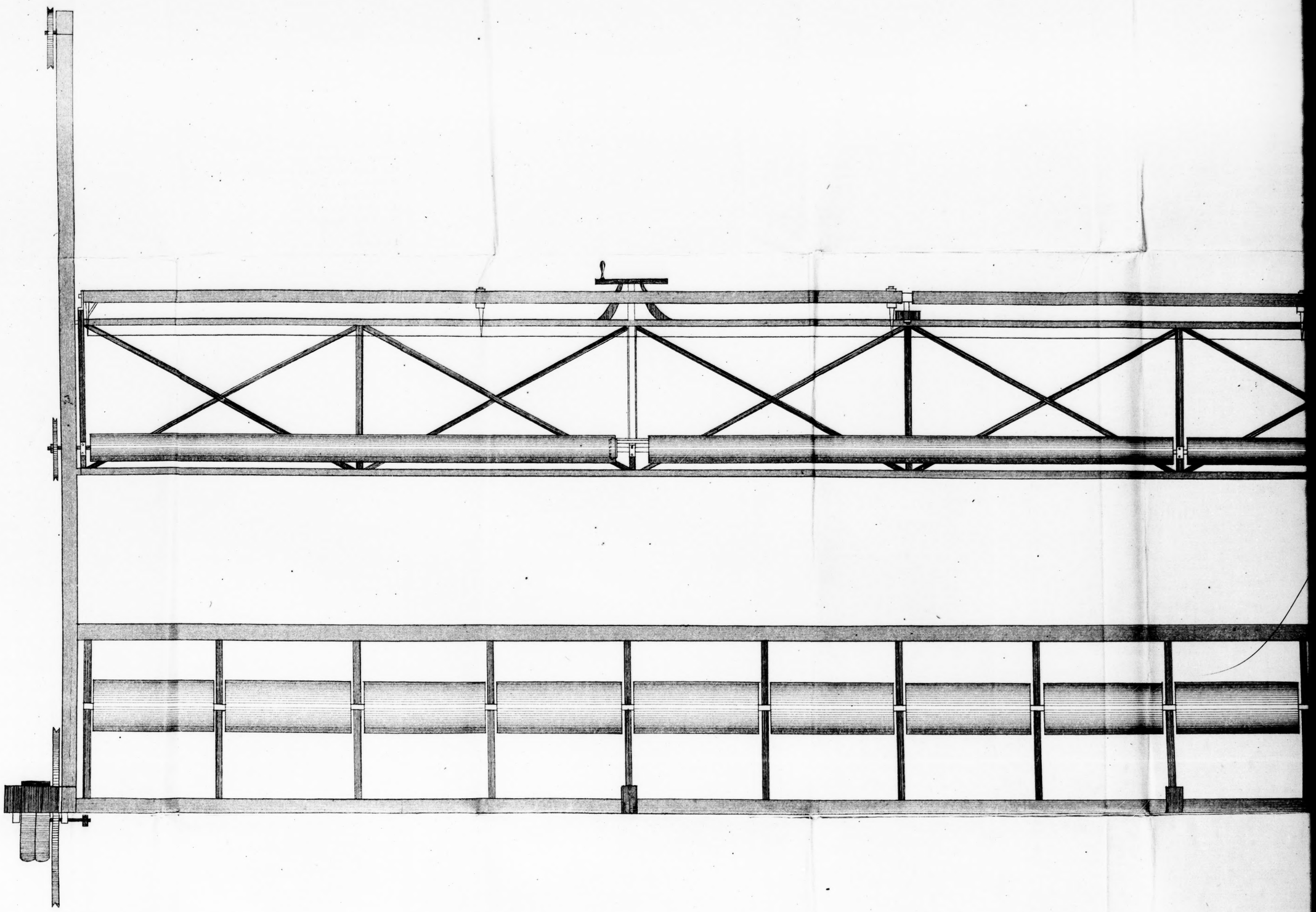
No 1408 { The Agawam woolen Co vs Edw D. Jordan } Page 326 No 2.

Top piece of the jaws 2½ in. thick, 4½ in. deep in the centre 3¾ in deep at the ends. Under jaw 1¾ in deep and 2½ in wide Upper jaw made of 3 pieces 2 pieces of plank, top board glued ~~together & bent~~ 3½ in arching. end pieces 15 in. long 2½ thick 2½ deep. Bevil of spindle rails ½ inch in 3½ inches upper spindle rail 4½ wide, 1 inch thick. Step rail 3 in wide 1 in. thick. Centre of step gaged on ⅜ from the front edge top rail falls back 3½ in for the boulsters. Cylinder 4½ in diameter





This post to be furred out to bear the Wheel and to give room for the wheel to run between the post and top rail.



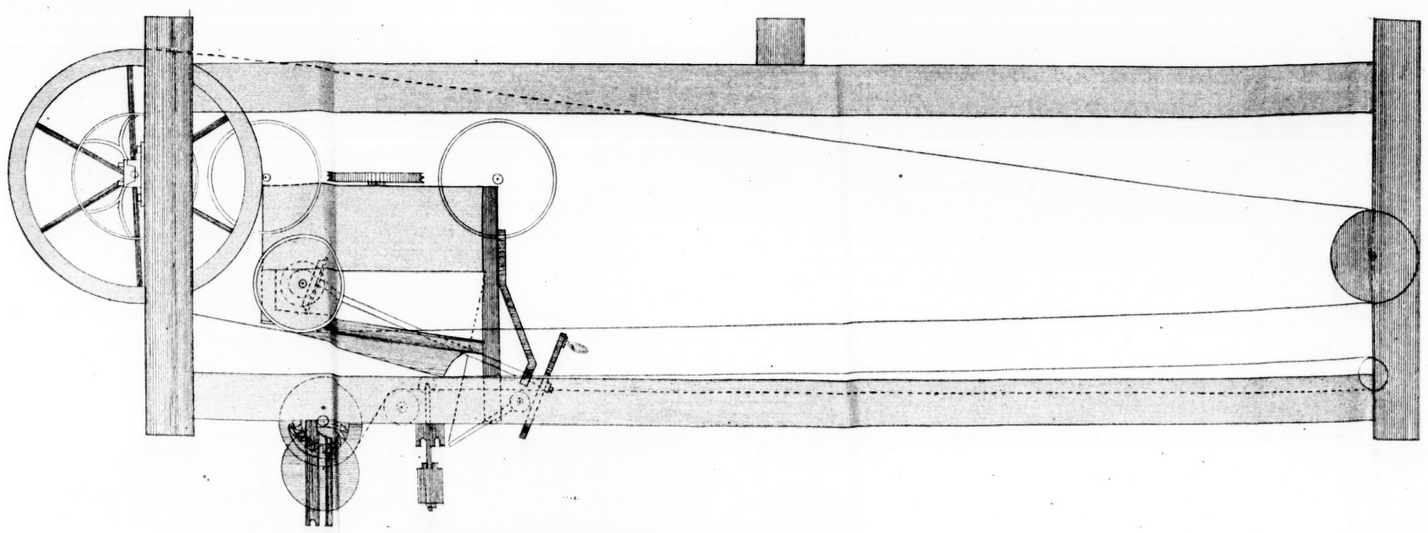
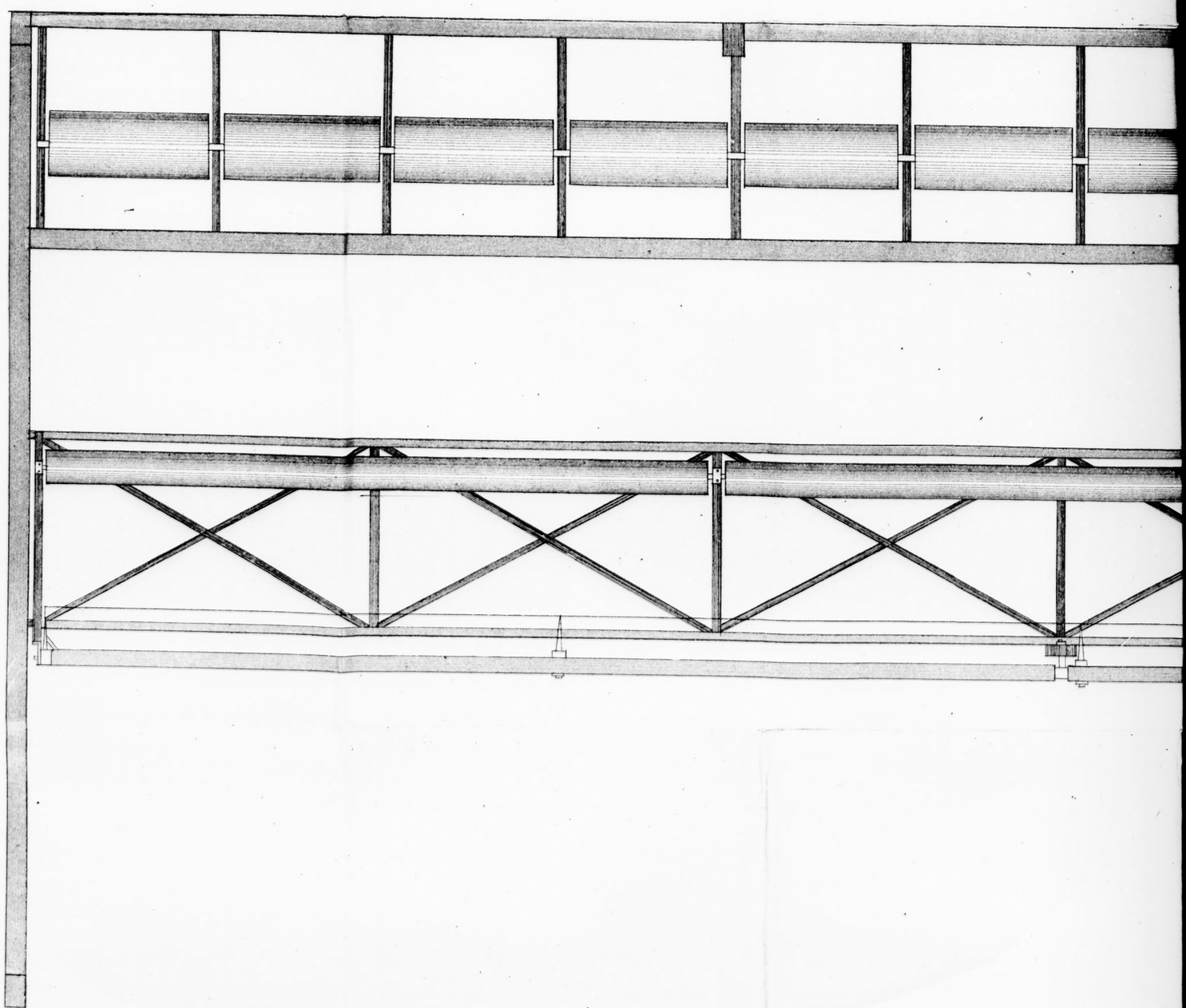


Exhibit N°16 C.W.T.

No. 408 { Agawam Woolen Co / Edw. D. Jordan } Page 330.

Exhibit No. 16 C.W.T.



John Goulding Mode of Manufacturing Wool or other fibrous Materials.

Reissued 29th July 1836.

No. 408 Agawam Woolen Co is Jordan — Page 675. No. 1.

Fig. 3.

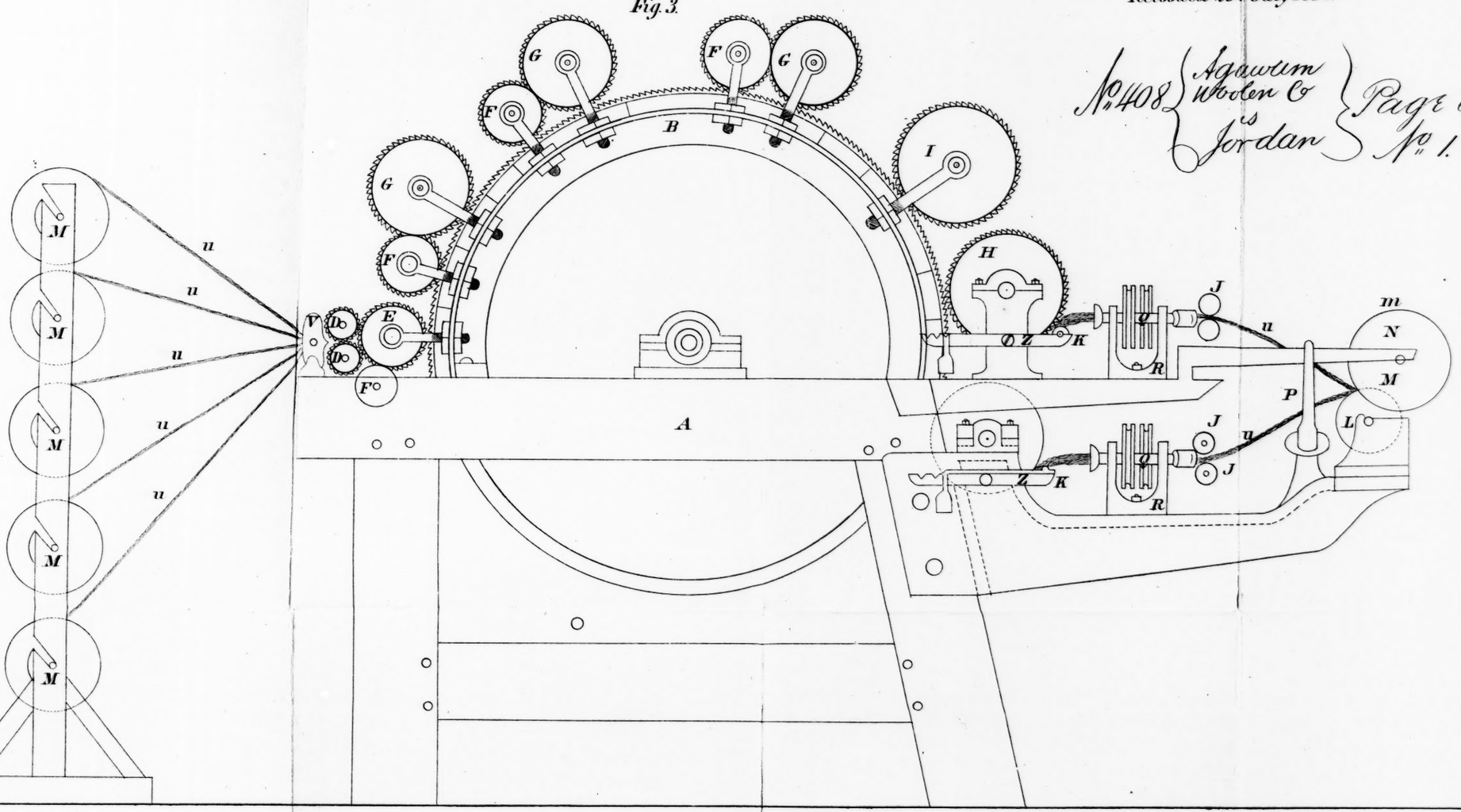


Fig 6

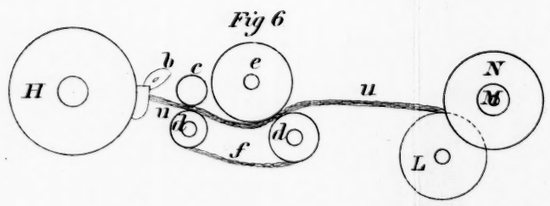


Fig. 9.

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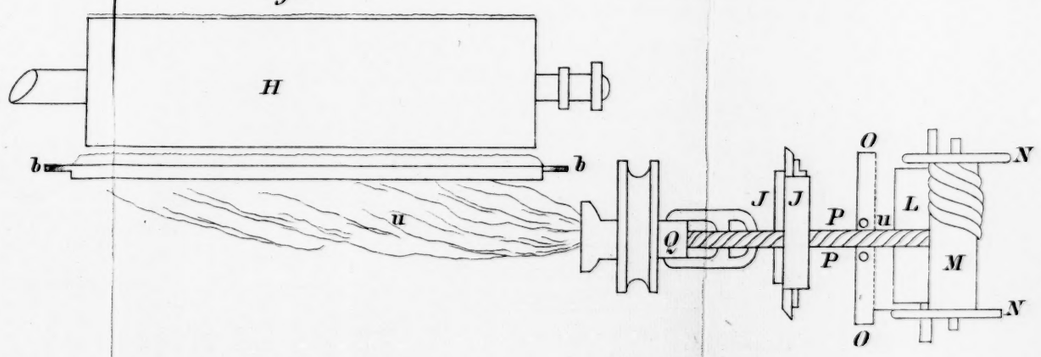


No. 408 { Agenoria Weston & Eben D. Jordan } Page 675 No. 2

Fig 1.

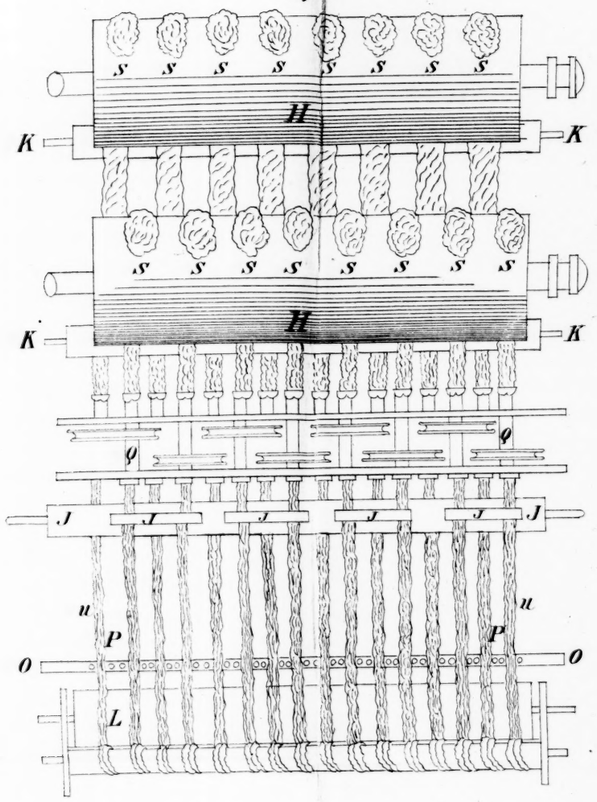


Fig 4.

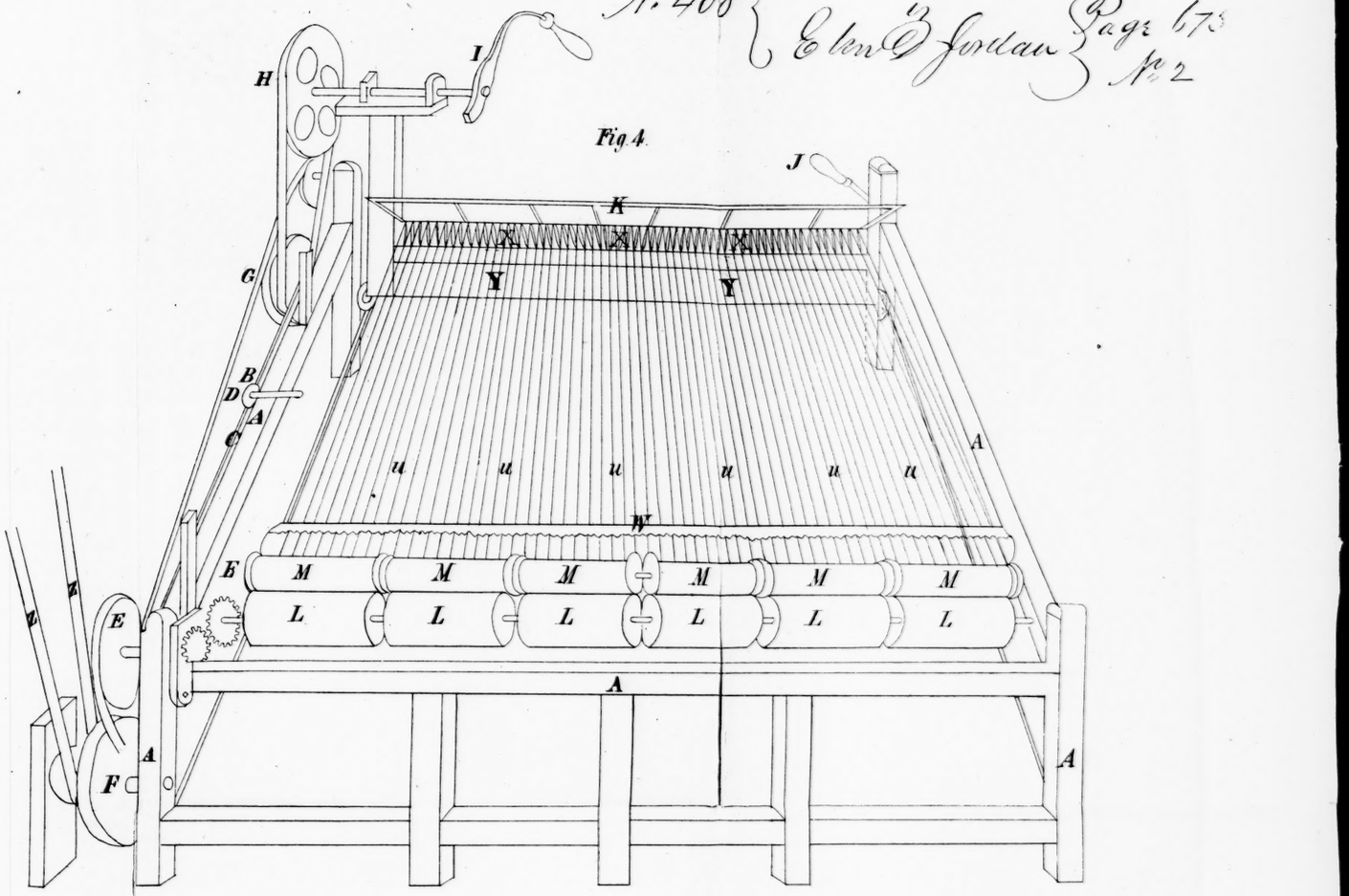


Fig 2.

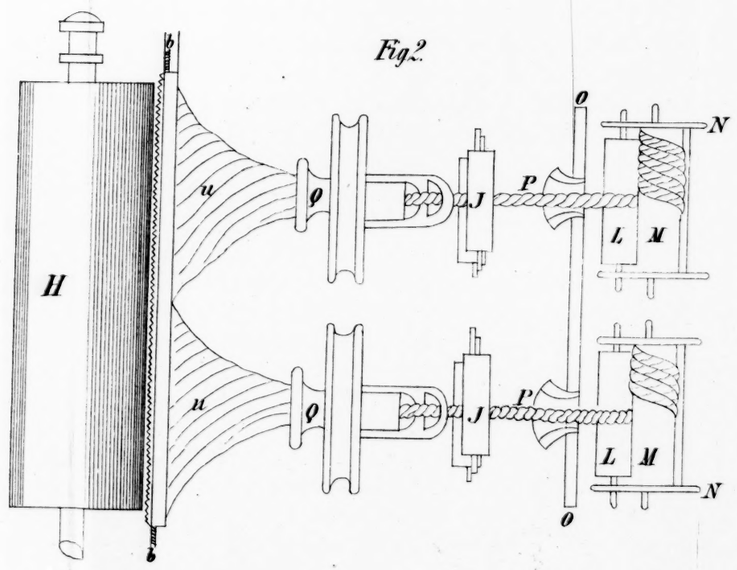
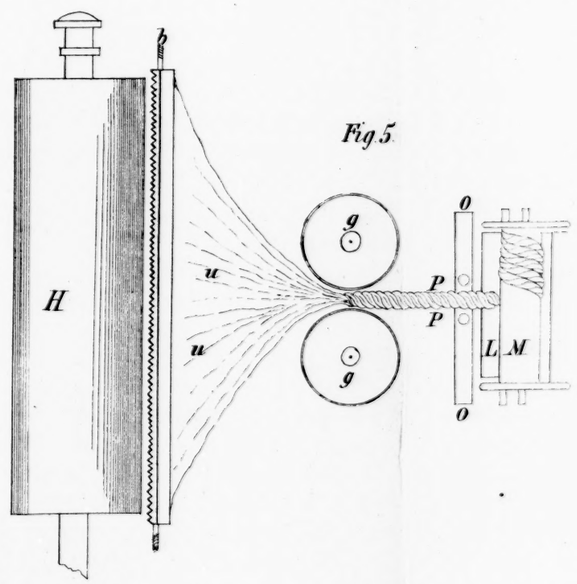


Fig 5.



No. 413,- Connellsville & S. Penna R.R. Co.
vs. City of Baltimore. - page 320.

MAP

SHOWING THE ROUTE OF T

Pittsburgh & Conn

RAIL ROA

and other Routes from the Ohio River & the Lakes to th

OLIVER W. BARNES,
President & Chf Eng.

1856

Rail Roads in operation
do. constructing
do. projected
Canals

LAKE ERIE
Steam. 1 M. in 30 M. 1 Sail. 1 M. in 60 M. Depth.
LAKE SHORE R.R.
CLEVELAND
CLEVELAND & MAHONING 52 M.
Hudson 22 M.
Ravenna
CLEVELAND 38 M.
Warren
Shenango Cr.
Mahoning R. R.R. 31 M.
Beaver R.
Alliance
OHIO & PENNSYLVANIA 34 M.
New Brighton
Canton
PITTSBURGH 44 M.
Wellsville
R.R. 22 M.
R.R. 29 M.
New Philadelphia
INDIANA R.R.
Steubenville
PITTSBURGH & STEUBENVILLE R.R. 42 M.
RIVER 21 M.
CHARTIERS V R.R.
Washington
HEMPFIELD R.R. 21½ M.
STEUBENVILLE
WHEELING
CENTRAL R.R.
OHIO 82 M.
Zanesville
HILLSBORO OHIO R.R.
Marietta
MARIETTA
Athens
Pickpre
Parkersburg
NORTHWESTERN VIRGINIA R.R.
BALTIMORE
MONONGAHELA R.
Union Town
Brownsville
Youghiogheny River
PITTSBURGH & CONNELLSVILLE R.R.
CONNELLSVILLE
Parkers Ford
NATIONAL TURNPIKE
OLD NATIONAL ROAD
Meyers M.
Wills Cr.
CUMBERLAND
From Wheeling to Cumberland 200 M.
From Pittsburgh to Baltimore 326 M.
Washington 285 M.
Buddytown
Mineral Spring Road 11 M.
ALEXANDRIA
LOUDON
Winchester
Strasburg
PITTSBURGH
Bunton's Pt. Perry
Keesport
PENNA CENTRAL R.R. 15 M.
Latrobe 10 M.
Greensburgh
West Newton
Youghiogheny River
PITTSBURGH & CONNELLSVILLE R.R.
Whole L. 147 M.
Fairfield
Ligonier
Blairsville
Kiskiminitas
ALLEGHENY R.
Killanning
ALLEGHENY VALLEY R.R. 47 M.
Franklin
Ridgeway
Brookville R.R.
PENNSYLVANIA STATE ROAD 38 M.
Johnstown
Susquehanna Summit 2580 feet above tide W.
CENTRAL R.R. 31 M.
Hollidaysburg
ROAD
Bedford
CHAMBERSBURG
HUNTINGDON & BROAD TOP R.R.
Bridgeport

SCALE:
1 2 3 4 5
10 Miles to one Inch.

No. 413,- Connellsville & S. Penna R.R. Co.
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SHOWING THE ROUTE OF T

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1856

Rail Roads in operation
do. constructing
do. projected
Canals

LAKE ERIE
Steamb'ts to Buffalo, Ogdens. LAKE SHORE R.R.
CLEVELAND
CLEVELAND & MAHONING 52 M.
Warren
Hudson 32 M.
Ravenna
CLEVELAND 39 M.
Shenango Cr.
Mahoning R. R.R. 51 M.
Weaver R.
OHIO & PENNSYLVANIA
Alliance
Canton
PITTSBURGH 44 M.
OHIO 34 M.
New Brighton
R.R. 24 M.
Wellsville
R.R.
New Philadelphia
INDIANA R.R.
Steubensville
OHIO RIVER 23 M.
PITTSBURGH & STEUBENVILLE R.R. 42 M.
STEUBENVILLE
WHEELING
R.R.
CENTRAL
OHIO 82 M.
Zanesville
R.R.
HILLSBORO OHIO
Marietta
MARIETTA
Athens
VIRGINIA
NORTHWESTERN R.R.
Ripley
Parkersburg
CHARTIERS R.R.
Washington
HEMPFIELD
BALTIMORE
Franklin
Ridgeway
ALLEGHENY R.
Brookville R.R.
VALLEY 47 M.E.
Kittanning
ALLEGHENY 10 M.
Kiskiminitas
Blairsville
R.
PENNSYLVANIA 33 M.
STATE ROAD
Johnstown
PITTSBURGH
Bantam's Port Perry
Keesport
PENNA CENTRAL R.R. 31 M.
Latrobe 10 M.
Greensburgh
West Newton
Youghiogheny River
PITTSBURGH & CONNELLSVILLE R.R.
CONNELLSVILLE
Brownsville
Union Town
MONONGAHELA R.
OLD NATIONAL TURNPIKE
CUMBERLAND
From Wheeling to Cumberland 200 M.
Meyers M.
Bridgeport
From Pittsburgh to Baltimore 326 M.
Washington 283 M.
Buddytown
ALEXANDRIA
LOUDON
Winchester
Strasburg
CENTRAL 24 M.
Sinnemahoning Creek
Sinnemahoning Creek
Bald Eagle Creek
Allegheny Portage R.R.
Allegheny Portage R.R.
Allegheny Portage R.R.

MAP
OUTE OF THE
Connellsville
ROAD
Lakes to the Seaboard Cities.

ARNES,
Eng

Drawn by Sigismund Löw Ass[t] Eng.

SUNBURY R.R.
Sunbury
DAUPHIN & SUSQUEHANNA R.R.
Port Clinton
EAST PENN[a] R.R.
Allentown
Philipsburg
NEW JERSEY CENTRAL R.R.
Somerville
NEW YORK
Reading
Trenton
PHILAD[a] & READING R.R.
Lewistown
Juniata R.
Millerstown
Dauphin
LEBANON VALLEY R.R.
HARRISBURG
ROUTE
SHEPMANS VALLEY
Carlisle
R.R.
Mechanicsburgh
Lancaster
PHILADELPHIA & COLUMBIA R.R.
PHILADELPHIA
CAMDEN & ATLANTIC R.R.
Newville
York
SUSQUEHANNA R.
Shippensburg
NORTHERN CENTRAL R.R.
Wilmington
Newcastle
N. & F. R.R.
Frenchtown
CH. & D. CANAL
Absecom
Chambersburgh
St Thomas R.R.
CUMBERLAND VALLEY R.R.
Greencastle
Havre de Grace
Hagerstown
METROPOLITAN
Frederick
OHIO R.R.
BALTIMORE
BALTIMORE & Cumberland R.R.
Harpers Ferry
Point of Rocks
RAIL ROAD
Annapolis
Potomac R.
WASHINGTON
HAMPSHIRE R.R.
ALEXANDRIA
VANASSAS GAP R.R.
CHESAPEAKE BAY
DELAWARE BAY
ATLANTIC OCEAN